

A COMAPARATIVE STUDY OF PRISON SYSTEMS IN AFRICAN COUNTRIES

By

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PROMOTER: PROF CH CILLIERS

DECLARATION

I declare that *A comparative study of prison system in African countries*

is my own work and that all sources I have used or quoted have been indicated and
acknowledged by means of complete references

.
Signature..... Date.....

Dedication

This thesis is dedicated to the Almighty God who has being and is still faithful and gracious. His mercies endure forevermore. He has and stills my pillar of strength, my rock of defense and ever present of help in times of need.

Acknowledgement

I wish to acknowledge the Almighty God for His abiding presence, His grace and mercy for helping me throughout the course of this study. Without the Almighty God this thesis will not be a reality.

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and in Africa especially will rise up to the challenge of making our prisons to truly be a rehabilitation and correction centre

Oluyemi Adetunji Stephens Ph.D

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Summary

The situation of prisons in Africa has been of concern to practitioners in the criminal justice system, researchers, policy makers, the government and even international organizations. Likewise, is the challenge of not having adequate information about prison system in Africa. In addition, most African countries are signatories to international treaties and convention regarding the treatment of prisoners, to what extent are prisons in Africa complying with the provisions and recommendation of such treaties and conventions. This study was therefore designed to explore the prison system in Africa countries.

As part of its objectives the study explored the prison condition in countries in Africa as exemplified by the physical structure of the prison buildings; living conditions with regards to overcrowding, medical care, separation of categories, food, sanitation, beds and beddings, administration and independent monitoring. Furthermore, the treatment and prison conditions of pre- trial detainees were also considered. Similarly, this thesis evaluated the treatment and prison conditions of prisoners with special needs. This category of prisoners include prisoners with mental health care needs, prisoners with disabilities, foreign national prisoners, older prisoners, prisoners on the death row and prisoners living with HIV/AIDS. The conditions and treatment of women prisoners, pregnant women prisoners, and babies living with their mothers in prison were also discussed. The Nelson Mandela Rules, Kampala and Luanda declarations were employed as a bench mark to ascertain whether the treatment and conditions in prisons in Africa meet up to international standards.

The study adopted a qualitative approach of inquiry using literature search as mode of inquiry. Data for the study was obtained from books, reports from international organisations such as United Nations, United Nations Office on Drugs and Crime, Penal Reform International, Amnesty International, international conventions and treaties among others, journals (Local, Africa and International), reports from selected countries, government legislations, policies, Acts, previous studies on prison system, web based information and national data.

The review of literature with regards to physical structure revealed that most prisons in African countries do not meet international standards pertaining to the issue of physical structure as most prison building are dilapidated and in bad conditions. The study further revealed that the prisons and treatment of prisoners in African prison do not meet international standards. In specific terms, most of the prisons in countries in Africa are overcrowded; most prisons are also characterized by inadequate medical care with lack of facilities, medical personnel and medications. To a large extent most prisons do not meet international standards with reference to separation of categories as most prisons in countries in Africa lock up awaiting trial persons with convicted persons, minor offenders with adult but in most cases women are separated from men. The food situation in most prisons in countries in Africa did not meet international standards in quantity and nutritional value. The finding of the study indicated that the sanitary conditions in most prisons in countries in Africa is in very poor condition which could lead to an outbreak of diseases, this too did not meet international standards. Most prisons in countries

in Africa are typified by lack of beds and beddings, prisoners in some prisons sleep on bare floors while some sleep standing while others sleep in shifts. This condition does not meet international standards. With regards to administration it was equally revealed that the record keeping of most prisons in countries in Africa is inadequate, most prisons do not have an ombudsman where prisoners could lodge their complaints while corruption seem to also be rife. This do not meet international standards as well. However, on a good note, most prisons in countries in Africa do permit independent observers such as NGOs, human rights organisations and international organization to have access to the prisons

Furthermore, literature search disclosed that the population of awaiting trial person in prisons in Africa is very high when compared to the total prison population and that some countries in Africa are among countries in the world with highest number of pre - trial detainees. The treatment and living conditions of pre - trial detainees in most prisons in African countries do not meet international standards as they are locked in overcrowded cells, often locked up with convicted persons, no legal representation and having to stay longer that the stipulates without being charged to court.

The thesis also conducted literature search on prisoners with special needs and the study point out that in each of the categories, prisons in countries in African countries do not meet international standards. For instance, there are no provisions to meet the mental health care needs of prisoners as there are no mental health practitioners, no facilities and no screening is conducted in most prisons. Similarly, there are no facilities to assist prisoners living with physical disabilities as well as older prisoners. The situation with foreign national prisoners are not different as there are no translation of prison materials that could make them adjust well to prison life, in some cases their consular are not contacted that they are in prison. With regards to prisoners on the death row, their conditions did not meet international standards as they are locked up in solitary confinement for most part of the day and their cells are often dirty with inadequate food and medical care. Some of this category of prisoners have been on the death row for as long as twenty years. For prisoners living with HIV/AIDS their treatment and condition does not met international standards as there are not treatment of any kind neither is there any form of screening conducted for inmates. For women prisoners, the treatment and conditions do not meet international standards as most prisons were not designed with women in mind. The living condition is unsanitary, unhygienic exemplified with inadequate toilet and bathroom facilities as well as no supply of peculiar needs of women such as sanitary towels. Review of literature equally indicates that there is no special treatment given to pregnant women prisoners. For children living with their mothers in prison, their treatment does not meet international standards as there is no special provision made for them, they share food with their mothers, some are locked up with their mothers for hours in overcrowded cells.

Based on the finding of this study, some recommendations were made. These include the need to conduct more studies on prisons in countries in Africa, the need to consider reviewing the indigenous methods of treatment of offenders before the advent of colonial masters, need for a synergy amongst all practitioners in the criminal justice. Other recommendations are that there should be more advocacy on the prison conditions, need to establish a special trust fund,

involve the private sector as well as professional bodies and to professionalize corrections management

Keywords: *criminal justice system, international standards, pre- trial detainees, prison conditions, prison system, prisoners with special needs, treatment,*

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Chapter One

Introduction

1.1 Background to the study

The prison system which was designed to rehabilitate, for and reform offenders' remains a topical issue and continued discourse among practitioners, researchers, scholars, and administrators in the criminal justice system in most nations of the world including African countries. One of the major issues of concern is the effectiveness of imprisonment as a means of rehabilitating offender and this has continued to generate discourse among policymakers in the criminal justice system, researchers, penologists, criminologists among others.

The prison systems in most African countries are riddled with various challenges such as overcrowding, poor prison environment, lack of professionals, inadequate medical attention, and inadequacy of rehabilitation programs among others (Nwolise, 2010, Matettoa, 2012). The consequence of problems encountered in most African prisons, make several ex-offenders to go back to crime after being released from prison, this creates insecurity and endanger the life and property of citizens. Some ex-offenders are re-arrested and remanded in prison, thereby compounding the overcrowding in the prisons and overstretching the inadequate facilities in the prison. This put to question the effectiveness of imprisonment as a punishment for crime.

In developed countries, treatment of offenders has moved away from imprisonment or punishment to that of community corrections; however, this could not be said to be the situation in the administration of criminal justice system in Africa countries. In addition, not many studies have been conducted on the prison system in African countries. Furthermore, little or no study has been conducted trying to do a comparative analysis of prison systems in African countries with a view to find out if there are areas of commonality, peculiarities, and differences to provide an African model on how to resolve the problems of prisons in African countries, thereby reducing crime, as well as the rate of reoffending with a view to ensure that our societies safer.

1.2 Problem Analysis

The role of prisons and imprisonment in the criminal justice system cannot be overemphasized. This is because imprisonment remains the major form of punishment or treatment for offenders in most nations of the world including African countries. However, in spite of the importance of the prison system to African countries, not many studies have been conducted to investigate the prison systems in African countries. This has made it impossible to have relevant and current literature on prison systems in Africa.

Furthermore, lack of relevant information on the prison systems in African countries is denying the continent an opportunity to have knowledge of what are the challenges in prisons in African countries. Lack of information on the current trends in prisons in Africa would also make it difficult if not impossible to proffer solutions to those problems. The question, therefore, is ‘What is the current trend in prisons in African countries?’

Another major problem of prisons in Africa countries is the reported case of an increase in the prison population. According to Walmsley (2011), the prison population has increased in 71% of countries in Africa between the end of 2008 and beginning of May 2011. This poses a question, in view of the increase in the prison population of African countries, how has the prison system been discharging its statutory role of rehabilitating and reforming offenders in view of the increasing population? This question has become relevant because most prisons in African countries were the ones built by colonial masters for limited offenders as at that time and these prisons have suffered neglect while no new ones are being built.

An increase in prison population in African countries has its attendant consequences such as overcrowding, poor sanitation, overstretching of the infrastructure in prisons and the likelihood of the prison not fulfilling its rehabilitation role. If the prison system is not carrying out its rehabilitation role, this could lead to increase in the rate of reoffending among offenders. An increase in the rate of reoffending of offenders would not be justifiable taking into cognisance the cost of maintaining offenders while in prison and the negative effects of reoffending on victims of crime.

In addition, most African countries are signatories to treaties and charters such as Article Charter on Human and People’s Rights, United Nations Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, the Kampala Declaration and the Luanda Declaration. However, not many of these African countries seem to be abiding by these resolutions. The

question is which African countries are complying with these international standards and which are not? It would also be of interest to investigate what are the challenges confronting those who are yet to conform to the international norms and standards.

Some African countries are still using criminal justice system inherited from their colonial masters. According to the report of a Special Rapporteur on prison and conditions of detention (2012), some African states are still confronted with a criminal justice system that is the legacy of the colonial era that is guided by a retributive philosophy that is in dissonance with right based approaches that emphasise rehabilitation and reform.

In view of adopting programs from the western world to solve challenges in Africa criminal justice system in the past years, how successful are these intervention programmes? Is it not the time to identify specific problems related to prisons in African countries and design specific African concepts that are relevant to Africa to solve problems in prisons Africa countries?

1.3 Justification for the study

Without any doubt, prisons in most African countries have been described to be in crisis and not many studies have been conducted to investigate prison systems in African countries. This thesis is therefore aimed at exploring the prison systems in African countries.

Taking a cue from the fact that most prisons in African countries are in crisis, there is, therefore, a need for reforms in these prisons. However, for any meaningful reforms to be embarked on there is a need to collect relevant and current information about these prisons. Consequently, this thesis is expected to provide current information and statistics that could provide a framework to assist in designing reform programmes for prisons in Africa countries.

In addition, it has been observed that despite the fact that most African countries are signatories to treaties and charters such as United Nations Nelson Mandela Minimum Rules for the Treatment of Prisoners, most prisons in Africa have not conformed to most international norms and standards. This thesis would explore how far have prisons in Africa countries conformed to international standards and the various challenges of not conforming. In the final analysis, recommendations would be made to stakeholders in the criminal justice system on how the prison system could conform to international standards regarding prisons in African countries.

Furthermore, there is need to identify specific problems and challenges peculiar to the prison systems in African countries during this world economic crisis as most countries of the world

are finding ways to reduce public spending. In view of this, it is pertinent to design model(s) that would address these challenges in view of the global economic crisis. This thesis will design an African model that can be employed and will be effective in addressing specific situations in prisons in African countries. This model is expected to improve service delivery and enable prison systems in African countries to be effective in discharging their statutory role in rehabilitating offenders.

This study is also timely taking into cognisance the intention of the international community to implement the post -2015 development agenda which recognises the importance of security and justice in ensuring stable and peaceful societies (United Nations High-Level Panel of Eminent Persons on the post-2015 Development Agenda,2014). This thesis would help African countries achieve this aim by describing the current trends in prisons in African countries and providing a framework that could address the identified challenges. This would enhance security and reforms in the criminal justice system in African countries thereby ensuring stable and peaceful African countries.

Since the debate on corrections is an on-going concern in the field of criminal justice systems, this thesis would also contribute to the discourse in the field by giving an African voice. It is also anticipated that it would stimulate further research.

1.4 Demarcation of Study

1.4.1 Comparative analysis of prison systems in selected African countries

- Identify areas of commonality, peculiarities and differences in the prison system of selected countries in Africa.
- Highlight the various challenges in the prison system of selected countries in Africa.
- Make policy recommendations that could improve the prison system in the selected African countries.
- Design an African model that would be tailored towards resolving the various problems in African prisons.

In order to achieve the set objectives information will be obtained through review of literature along the following line:

- Review of the criminal justice system in African countries during the pre-colonial, colonial and post-colonial era
- Historical background of imprisonment - international and selected African countries
- Philosophical underpinning of imprisonment

1.4.2 Comparative study

The comparative study would be conducted using the United Nations Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, the Kampala and Luanda declarations as a benchmark to evaluate if prisons in countries in Africa meet the minimum international requirements considering the following indicators.

- Prison conditions viz-a vis physical structure of prisons, prison conditions and treatment of prisoners,
- Treatment and conditions of pre-trial detainees
- Prisoners with special needs such as prisoners with mental health care needs, prisoners living with disabilities, foreign national prisoners, older prisoners, prisoners on the death row and prisoners living with HIV/AIDS
- Women prisoners, pregnant women prisoners, and babies living with their mothers in prison.

1.5 Research methodology

Research design

A research study is designed to describe, explain and validate findings. This thesis is designed to investigate prison systems in African countries. To be able to achieve its purpose, the research is expected to answer some research questions which would enable the researcher to make rational decisions. In a bid to answer research questions, a research design is required.

Research design can be described as a comprehensive and detailed outline of how the investigation will be conducted. Trochim (2006) refers to research design as the structure of research, the “glue” that holds all of the elements in a research project together. It is the logical structure of the inquiry. A research design is to include how the data is to be collected, what instrument will be used to collect data, how the instrument will be used and intended means of analysing the data.

The importance of research design cannot be over emphasised in that it is to ensure that data obtained provides answers to the research questions as unambiguously as possible. In addition, research design helps to minimise the possibilities of drawing incorrect inferences from data obtained.

Data would be obtained through the review of related literature. The choice of this data collection technique is predicated on the outlook of the research topic. The researcher would take into account the limitations of textual data in the course of the study.

1.6 Research method

Research method refers to a process to collect information and data to make decisions. It could also mean technique(s) of collecting data systematically. For the purpose of obtaining data in this thesis, the researcher will use both a qualitative and quantitative strategy of inquiry.

Qualitative research according to Dezin (2000:8) emphasised the qualities of entities, processes, and meanings that are not examined and measured in terms of quantity, amount, intensity or frequency. It could also be described as a research approach that gives meaning, concepts, definitions, characteristics, metaphors, symbols and description of things (Berg, 2007).

The qualitative mode of inquiry is found suitable for this study because it would enable researcher answer the question regarding the trend in prison systems in African countries and whether the prison conditions adhere to international standards. In addition, the thesis is to collect information from multiple sources rather than a single source, after which the researcher would review all data, make sense out of it and organise the findings into categories and themes that cut across the sources data. This according to Denzin & Lincoln (2011) is a key characteristic of a qualitative study.

A quantitative model of inquiry, descriptive research strategy would be employed to obtain data that could be represented numerically such as prison population, the percentage of certain categories of prisoners in ratio of total prison population, as well as prison population in relation to the total population of some Africa countries. A good description is fundamental to the field of research and it has added immeasurably to our knowledge of the shape and nature of society. This mode of inquiry is found to be appropriate because the focus of the study is to explore the current trend in prisons in African countries thereby providing knowledge of prison systems in African countries.

In addition, an accurate description of the trends in prisons in African countries could play a key role in designing frameworks that could lead to reforms in prisons in African countries. Furthermore, a good description of trends provokes the “why” question that could lead to an explanatory research. To be able to answer the question “why” we must be sure of the facts and dimension of the phenomenon, in this case, the trend in prisons in African countries. This thesis would describe the trends in prisons in African countries, it is expected that the data to be presented by this study could lead to the question why do we have such trends in African countries? Thereby provoking action that could culminate in reforms in prisons in African countries.

1.7 Data collection

Data was obtained primarily from literature search and review of related literature. The review of the literature would among other things examine various studies that have been conducted in relation to the prisons and prison conditions in African countries. This would enable the researcher to identify gaps in the literature that needs to be filled.

The sources of information for this included:

- Books
- Reports from international organisations such as United Nations, United Nations Office on Drugs and Crime, Penal Reform International, international conventions and treaties among others.
- Journals (Local, Africa and International)
- Related reports from selected countries
- Government legislation, policies, Acts
- Previous studies on prison system
- Web-based information
- National data

1.8 Expected outcome

- A comprehensive information on prison systems in Africa

- Report on whether prisons in Africa countries comply with international standards regarding treatment of prisoners
- Highlighting the various challenges in prisons in Africa
- Making recommendations that could inform policy formulation regarding prison reforms in Africa
- Design a model with African content on how to resolve the various problems to be identified
- Stimulate further research

1.9 Chapter outline

Chapter 1: Introduction

This chapter consists of the introduction, background to the study, problem analysis, and demarcation of the study, research methodology, data collection, expected outcome, chapter outline, and limitations of the study.

Chapter 2: The Criminal justice system

This chapter comprises of a review the Systems Theory with a view to ascertain whether the criminal justice system can actually be regarded as a system. In addition, the chapter highlights the criminal justice system from a global perspective, exploring the criminal justice system in countries like the United States of America, United Kingdom, Canada, and France. In addition, the criminal justice systems in some African countries were reviewed. Emphasis was on the various components of the criminal justice system, the objective, functions, and roles of each of these components. The working relationship of these components was examined.

Chapter 3: Historical development of imprisonment

In this chapter, the researcher reviewed the literature on the concept of imprisonment, the evolution of prison and imprisonment in the biblical era, prisons and mode of punishment in the middle ages. Other aspects considered in this chapter are various reforms and early reformers, various developments of prison in America, the philosophy of imprisonment and theories of punishment were explored.

Chapter 4: Concept of punishment and imprisonments in African countries

The traditional concept of punishment before the introduction of imprisonment in African countries was investigated. In addition, the historical background of imprisonment and various developments in prisons African countries was examined.

Chapter 5: Prison conditions in African countries

In this chapter, the researcher investigated the current trend in prisons in African countries and explored whether the prison conditions and treatment meets international standard. This investigation was conducted based on some indicators that included, prison conditions represented the physical structures, the treatment and condition of prisoners with emphasis on overcrowding, medical care, segregation of categories, food, sanitation, beds and beddings administration and independent monitoring.

Chapter 6: Pre Trial detainees

This chapter reviewed and presented the findings of literature on pre-trial detainees in African countries. The findings include statistics of pre-trial detainees and treatment and living conditions of pre – trial detainees using Nelson Mandela Rules as a bench mark to measure whether the conditions and treatment of pre- trail detainees meet international standards.

Chapter 7: Prisoners with Special needs

This chapter explored and presented the findings of the review of literature of prisoners with special needs. The category of prisoners with special needs considered in this chapter include, prisoners with mental health needs; prisoners living with disabilities; foreign national prisoners, prisoners on the death row; older prisoners and prisoners living with HIV &TB. In addition, this chapter of the thesis gave a report on the population of women prisoners, the treatment and living conditions of women prisoners, pregnant women as well as children living with their mothers in prisons.

Chapter 8.

Summary, Recommendations, and Conclusion

In this chapter, a summary of the findings was given and based on the findings of the study, recommendations were made to stakeholders in the criminal justice system in African countries, and conclusions of the study was drawn.

1.10 Limitation of the study

This thesis was designed to explore the prison system in African countries and its strategy of obtaining data was through a literature search. This section intends to highlight some of the limitations of the study.

One of the limitations of this thesis is the fact that the study did not consider prisons in all countries in Africa. This is due to the fact that the researcher was unable to obtain data of some countries some countries do not make information on prisons available. Some countries still treat information about prisons in secrecy. Moreover, this study is time-bound and exploring the prisons in all African countries may have negative consequences on the timing of the study.

Additionally, this study relied solely on information from secondary data such as books, reports, and other research studies amongst others. The researcher did not obtain data from primary sources such as paying visits to these prisons to ascertain some of the findings obtained during the literature search.

Furthermore, there is a dearth of information on prisons in African countries. Not many empirical studies have been conducted on the treatment and conditions of prisoners and even the prison management in general. It needs to be pointed out that some of the available information is not national in nature in that the study may be confined to a part of a country. This makes it impossible to generalise the findings of such studies

Likewise, empirical data is almost non- existent in the case of some categories of prisoners. These categories of prisoners include such as older prisoners, prisoners with disabilities, foreign national prisoners and pre-trial detainees. For instance, pertaining to information on the treatment on conditions of pretrial detainees, information on the general prison population is often used. This may not represent some particular concerns of pretrial detainees.

In addition, there is no national data with regards to some aspects of prison life. For example, there is no national data in respect of prisoners with mental health challenges, prisoners living with HIV &TB just to mention a few.

Another form of limitation is that the researcher has to obtain data from the media and website sources. At times these sources may not be credible enough. It would have been much better if there are more empirical sources of data.

On a final note, the majority of the sources of data are from foreign sources. One could not rule out the element of bias in some of these sources. Taking a cue from the fact that there could be negative perceptions of African countries by the Western world.

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Chapter Two

Criminal justice system

2.1 Introduction

In this chapter, the researcher examines the system theory as an underpinning theory to explain the criminal justice as a system. In addition, this chapter explains the criminal justice system; review the origin of criminal justice system, the components of the criminal justice system, and the criminal justice system and the government structure. In addition, the criminal justice system of countries in the world such as United States of America, United Kingdom, Canada, France and some African countries were also reviewed. The review includes among other things the components of the criminal justice systems, their role and area of the interdependence of the various agencies in each of these countries.

2.2 The Systems theory

There have been various definitions and interpretation of the word "system". In one of such definitions, a system is described by Merriam Webster dictionary as a regularly interacting or independent group of items forming a united whole' (Merriam Webster Dictionary,2016) ". Another definition of a system is given by Business Dictionary as 'an organised, purposeful structure that consists of interrelated and interdependent elements (components, entities, factors, members' parts, etc. These elements continually influence one another (directly or indirectly to maintain their activity and the existence of the system, in order to achieve the goal of the system' (Business Dictionary, n.d). Rapoport (1986: xvi) defined a system as a whole, which functions as a whole by virtue of the interdependence of its part. In summary, from the researcher's perspective of the various definitions of a system, for a system to exist certain conditions must be met. These conditions include one, there must be different components; two, these components must interact and are interdependent; three, the interaction must be in a defined environment; four, there must be a purpose or goal that the components intend to achieve; five, there must be an input; and six; the interaction must have an output. It is expected that the interaction of the various components would have an effect on the input.

Rapoport went further to submit that the method which aims at investigating how this is brought about is the widest variety of systems is referred to as General System Theory. Systems theory as it is known today was employed by L.von Bertalanffy, a biologist as the basis for the field often known as general system theory a multi-disciplinary field in 1968. System theory is a

transdisciplinary study of the abstract organisation of phenomenon, independent of their substance, type of spatial or temporal scale of existence. System theory also investigates both the principle common to all complex entities and the (unusually) mathematical models which can be used to describe them (Heylighen & Joslyn, 1992).

Van Bertalanffy emphasised that real system is open to, and interact with, their environment and that they acquire qualitatively new properties through emergence, resulting in continual evolution. Bouler (1981) made efforts to explain how related components at different levels interacted with one another in forming a system, including the interaction of these various units at different levels of interrelationships among the units.

Furthermore, he attempted to develop useful generalisation across systems, it was argued that all systems had some characteristics in common and that it was useful to understand different systems in terms of these commonalities. It was put forward that a whole system was more than the sum of its parts and therefore the parts of a system are better understood in the context of the whole.

According to Bernard, Paoline & Pare (2005), in a bid to generalise the use of General Systems Theory, the theory moved beyond descriptive terminology asserting that the concept and proportions of GST were a mechanism for an understanding of the phenomenon under study. General System theory has been employed to explain and further understand different concepts in various fields such as organisation (Foster, 2012); medicine (Decker & Redhorse, 2014); management (Charlton & Andrai, 2003, Mele, Pels & Polese, 2010); social work (Staff, 2014); communication (Infante, Rancer & Womack, 1997); economics (Hodgson, 1987, Intriligator, 1980); political science (Kaplan, 1968); and criminal justice (Bernard et al., 2005).

2.3 Criminal justice and the system theory.

There have been various studies on the relevance of the system theory to the criminal justice system (Walker, 1972, Gigch, 1978, Kriska, 2004, Bernard et al., 2005). However, opinions of researchers in criminal justice differ regarding the relevance of system theory to the criminal justice system.

For instance, Walker (1972) opined that criminal justice is a system. He hinged his position on the fact that criminal justice system agencies and institutions (police, courts, and corrections) were interrelated and are working towards a common goal.

In another study, Gigch (1978) used GST as a framework for understanding the major criminal justice components (that is police, courts, and corrections) as well as additional levels of agencies and institutions. He reasoned that, there was a whole criminal justice system that was greater than the sum of the individual parts; that there was multiple interlocking and overlapping system in criminal justice as was true of complex organisation (Gigch,1978:23-25). He went further to say that specific criminal justice agencies and agents were subsystems within the criminal justice system, which itself was a subsystem within the larger political, economic, educational and technical system. Therefore, he described criminal justice as a system.

Furthermore, Kraska (2004) argued that the systematic approach to criminal justice facilitated the observation of criminal justice in macro terms (looking at the big picture). He claimed that system theory is a useful perspective for potential reform and improvement of criminal justice because the goal of system theory is to make systems more effective by detecting problems and focusing on organisation and management concerns. He declared that system was not resounding among criminal justice scholars because it was 'not adopted in its entirety' instead in bits and pieces' were included and excluded where convenient.

In addition, Bernard et.al (2005) employed GST to analyse the American criminal justice system. The researchers alluded to the fact that the system theory reveals essential insights into criminal justice structure and functions. They reported that criminal justice agents and agencies are best understood as operating in the context of the larger whole and concluded that criminal justice system is a system in the sense of general system theory.

However, some scholars in the criminal justice system hold a different view that criminal justice is not a system. Amongst them are Skoler (1977) who submit that criminal justice could not be regarded as a system because of lack of clearly defined goals across system across systems component. Duffee (1990:3) disagree that criminal justice is a system based on the fact that the various agencies of the criminal justice system namely, the police, courts, and corrections regardless of the fact that they are working in the same locality and under same laws have contradictory objectives and with such independent set of constraints it becomes difficult to imagine that the primary determinant of criminal justice agency action is the action and needs of other criminal justice agencies. Disagreeing with the position of Skoler and Duffee, Maguire, Howard& Newman (1998:38) argued that the criminal justice system (and the subsystems within them) shared at least three notable objectives shared at least three, these

are effectiveness, fairness, and efficiency. Another position different from the two positions earlier mentioned that criminal justice is a system or not, Hagan (1989) took a midpoint by stating that criminal justice system was a "loosely coupled" system.

From all discussed, it is evident that the argument on whether criminal justice is a system or not is an on-going discourse. It is the researcher's expectation that as a follow up on this study, efforts would be made by researchers in the criminal justice in Africa to explore whether the criminal justice in Africa is really a system or not.

2.4 What is criminal justice?

Criminal justice is a field of study that deals with the nature of crime in society as well as analysing the formal processes and social agencies that have been established for crime control (Senna & Siegel, 1996). The core of criminal justice is crime and how to control or manage crime. Crime is part of the society. According to a foremost sociologist, Durkheim, crime is a social fact, a feature of the society rather than individuals. He went further to say that crime was evident to all societies, it (crime must be seen as a normal endemic feature). Therefore, crime is not abnormal, endemic in every society; it is simply part of normal industrial societies where people live in the complex social organisation. Crime is a normal aspect of a healthy society, as a society without crime must be extremely repressive and dysfunctional. Though crime may be endemic in societies, there is, however, a need to control crime.

In a bid to control crime, concerted efforts have been made to establish agencies of government whose task is to identify perpetrators of crime, providing them with a fair hearing on whatever charges against them, and if found guilty as charged, punishing them with fair and effective correction treatment (Sienna&Siegel,1996:16). Hence the evolvement of the criminal justice system. Interplay of these agencies of government to control crime is what is referred to as criminal justice system.

The criminal justice system is the set of agencies and processes established by the government to control crime and impose penalties on those who violate laws (National Centre for Victim of Crime, 2008). In another definition, the criminal justice system is the system of practices and institutions of government directed at upholding social control, deterring and mitigating crime or sanctioning those who violate the law with criminal penalties (Wikipedia, 2017).

The criminal justice system according to Daly (2011) could be defined as "a loosely coupled collection of interdependent agencies each having specific functions (which can be in conflict

with other agencies) that are subject to legal regulations, where agency workers have great discretion in making decisions when responding (not responding) to harms defined as criminal by the state, and where value conflict exists within and across agencies and in general population about the meaning of justice..

2.5 Historical background of criminal justice system

The origin of effective control of crime can be attributed to the 1764 publication of an Italian social thinker, Cesare Beccaria's famous treatise 'On crime and punishments'. In the publication, he put forward a convincing argument against the use of torture and capital punishment which were prevalent in the 18th Century. He persuasively argued that only the minimum amount of punishment was needed to control crime, if the criminal could be convinced that their law violations were certain to be discovered and swiftly punished (Beccaria,1794).

As a fall out of Beccaria's argument, scholars and experts have been in search of a social policy that would effectively control crime, treat criminals, protect victims and ultimately benefit society as a whole. Within a period of 50 years of his publication, the first police agency, London Metropolitan Police was established to maintain peace and identify criminal suspects and the first prison was created to provide non-physical correction treatment.

In 1891, the concept of criminal justice began to be recognised. A crime commission named "The Chicago Crime Commission", a professional association funded by private contribution was established. The commission acted as citizen's advocacy group and kept track of the activities of local justice agencies (Walker, 1980). The commission is still operational.

The groundbreaking work of the Chicago group was replicated in a number of other jurisdictions in the United States of America. In 1922, one of the replicas of Chicago commission, Cleveland Crime Commission provided a detailed analysis of local criminal justice policy and discovered a widespread use of discretion, plea bargain and other practices unknown to the public.

Some commentators view the Cleveland Crime Commission survey as the first that treats criminal justice as a people processing system, a view that is still subsisting until today (Walker,1980). In 1931, President Herbert Hoover appointed the National Commission on Law Observance and Enforcement which is commonly known today as Wickersham Commission. The Wickersham Commission made a detailed analysis of the U.S justice system

and helped usher in an era of treatment and rehabilitation. It also revealed in details the various rules and regulations that govern the system. In addition, it exposed how difficult it was for justice personnel to keep track of the system's legal and administrative complexity (Walker,1980)

According to Samuel Walker, the justice historian, the modern era of criminal justice can be traced to a series of research projects which first began in the 1950s under the sponsorship of American Ford Foundation (Walker,1992). The research project was originally designed to improve an in-depth analysis of the organisation, administration, and operation of criminal justice agencies. However, while the project was on-going it became apparent that the justice system contains certain procedures many that have been kept secret from the public view (Senna &Siegel,1996:16). The focus of research now shifted to the obscure processes and interpretations, investigation, arrest, prosecution and plea negotiations. From the finding of the various researchers, it became obvious that justice professionals employed a lot of personal choice in decision making and showing how these discretions were used became the prime focus of the research effort

For the first time, the term criminal justice system was introduced and to be used, describing a view that justice agencies could be connected in an intricate yet often observes network of decision-making processes. In 1967, the President's Commission on Law Enforcement and Administration of Justice ('the crime commission') which was appointed by President Lydon Johnson published its final report entitled 'The challenge of crime in a free society' (President's Commission on Law Enforcement and the Administration of Justice, 1967). This group of practitioners, educators, and attorneys was charged with creating a comprehensive review of the criminal justice process and recommending reforms.

At the same time, the U.S Congress passed the Safe Streets Crime Control Act of 1968 providing for the expenditure of federal funds for states and local crime efforts. This Act helped launched a massive campaign to restructure the justice system in the U.S.

2.6 Government structure and the criminal justice system

The criminal justice system is a subsystem within a larger political, economic, educational and technical system (Gigch, 1978). It is therefore imperative to describe the relationship between the criminal justice system and the structure of government.

In most nations of the world, there are three organs of government namely the executive, legislature, and the judiciary. These three organs of government provide the basic framework for criminal justice in most countries. For instance, the legislature makes laws that determine which acts or conducts is against the law, establishing penalties for criminal violations and rules for criminal violation and rules for criminal procedure. The courts, interpret the law and determines whether it meets constitutional requirements while the executive arm of government plan programs, appoint personnel, and exercises administrative responsibility for criminal justice agencies.

A further insight into the roles of the three organs of government viz – a- viz criminal justice system is highlighted below:

The legislature

The main role of the legislature in the criminal justice systems is to define or describe what criminal behavior is and to stipulate penalties for committing such crime. The legislature carries out this responsibility by the virtue of the power conferred on her by the constitution. The legislature also passes laws involving criminal procedures. These include rules and regulations concerning arrests, search warrants amongst others. In addition, the legislature approves funds for agencies in the criminal justice systems. The legislature also serves as a forum for expressing public opinions on criminal justice issues (public hearing).

The Executive

The executive arm of the government in most cases appoints judges to the various courts. It is the responsibility of the executive to appoint heads of agencies of criminal justice systems such as the head of police, head of corrections, head of judiciary and head of Justice Ministry or Department. The executive has the powers to remove administrative heads of agencies of the criminal justice system. Furthermore, the executive in the name or office of the President or governor have the constitutional powers to grant pardons for the crime.

The Judiciary

The judiciary is represented by the various courts, the courts conduct criminal trials, and impose sanctions, and sentences on guilty offenders

2.7. Components of the criminal justice system

The criminal justice system has 3 basic or major components namely, the law enforcement agents; adjudication (courts which include, judges, prosecutors, defense lawyers); and corrections (prison officials, probation officers, and parole officers).

Law enforcement agents: In most cases, law enforcement agents are referred to as the police. The police officers are the first contact with crime or offenders in the criminal justice system. The responsibilities of the police in the criminal justice systems include preventing crime, maintaining order, arresting offenders, investigating and gathering evidence. In addition, law enforcement agents bring forth charges against the offender and, protect life and property.

Courts

The second in line of the criminal justice system is the court of law. The courts have personnel who make the system to work. They are the judges, the prosecutors, and defense lawyers. It is at the courts that the criminal responsibility of the accused is determined. It is the responsibility of the courts to declare an accused guilty of an offense and proclaim a sentence. It is important to mention that concerted efforts are made to ensure that an innocent person is set free without any adverse consequences.

The judge: who in some cases are described as finders of facts, preside over the proceedings at the courts and hear the cases. It is also the responsibility of the judge to ensure that all laws are strictly followed while the trial is on-going. Judges are empowered by the law to sentence convicted offenders for their criminals.

Prosecutors: are legal officers who represent the state (government) in the course of the trial from the commencement to the end of the case. They present evidence(s) in court, question witnesses and decide (at any point after charges have been filed) whether to negotiate plea bargains with defendants. The major responsibility of the prosecutor is to prove the guilt of an accused person.

Corrections: The third component of the criminal justice system is corrections. The role of corrections is to uphold and administer sentences handed down by the judge. It also represents the post-adjudicatory care given to offenders when a sentence is imposed by the courts (Senna & Siegel, 2002:6). Corrections works to protect the society by assigning appropriate punishments for offenders and this include jail or prison time, parole or probation. Personnel

in corrections component of the criminal justice system include prison officials, probation officers, and parole officers.

2.8 Criminal justice system in the United States of America

The criminal justice system in the United States of America has been in existence for about 200 years and is fully entrenched the American culture. In the United States, the criminal justice system is divided into three categories namely federal, state and military (Smith,2017). The criminal justice system in the U.S has been described at various times and in different ways but there are basic concepts that are common. For instance, the criminal justice system in America has been described as to mean a collection of federal, state and local public agencies. The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws (National Center for Victims of Crime, 2008). Criminal justice system according to Senna & Siegel (2002:4) are the various stages through sequential stages through which offenders pass from the initial contact with the law to final disposition and the agencies charged with enforcing the law at each stage of these charges.

According to De Roche (2012), the criminal justice in America was created to keep communities safe, to respect and restore victims and to return offenders who leave prison to be self sufficient and law abiding. To carry out these responsibilities of the criminal justice system in America are three (3) main components namely, the law enforcement, the court system and the correctional system (Senna & Siegel, 2002:5). To corroborate the assertion of Senna & Siegel, Kappler (2012) submit that the criminal justice system in the U.S comprises of three primary and discernible components: police, courts, and corrections and it (the criminal justice) are sometimes referred to as sub - system. This suggests that the components of criminal justice systems in the U.S are interrelated, interdependent and they strive to achieve a unified goal of controlling crime in the U.S.

Furthermore, these agencies are to provide solutions to the problems of crime and to shape the direction of crime policy. Likewise, the loosely organised collection of agencies is charged with the responsibility of protecting the public, maintaining order, enforcing the law, identifying transgressors, bringing the guilty to justice and treating criminal behavior.

The first component of the criminal justice system in America is the law enforcement agencies. The law enforcement agencies are the first contact an offender has with the criminal justice

system (Kappler, 2012). Personnel of law enforcement agents includes police officers, sheriffs and deputies, federal agents, game and park rangers, detectives and other individuals that normally make the first contact with criminals. The responsibilities of law enforcement agents include upholding the law, investigating crime and apprehending the individual(s) that have committed any form of crime.

The second component of the criminal justice system in America is the court system. It is the courts that determine whether a suspect is guilty as charged or not. Major players in the court systems are judges, prosecutors, defense lawyers and jury members (Dunning, 2016).

A judge presides over the trial and has the responsibility to ensure the legality of the trial process. It is the duty of prosecutors to file a criminal charge(s) against the accused, provide witnesses and evidence to prove his case. City and county prosecutors try persons of breaking state laws in state courts while federal offenses are tried in federal courts. The defense attorneys who in most cases are private practice attorney are hired by the defendant. A judge ensures that the criminal trial is conducted in accordance with rule of law and procedure (Dunning, 2016).

The third component of the criminal justice system in America is corrections. This component ensures that the convicted offender serves his or her sentence as determined by the courts (Dunning, 2016). The officers charged with these responsibilities are probation officers, parole officers, and correction officers. These officers see to it that convicted offenders serve their sentences as stipulated by the courts and supervise the convicts as they serve their sentence.

- Correction officers supervise inmates that are being housed and serving sentences in prison. Correction officers can be found in county and city jails where inmates serve sentences for misdemeanors or being detained during the trial.
- Probation officers supervise adult and juvenile offenders who are being monitored by the courts in lieu of serving a sentence in jail. In addition, they conduct a pre-sentence investigation for courts, giving recommendations for sentencing to a judge with a compilation of information.
- Parole officers provide supervision of individuals released from early on parole, conducting home visits, drug tests and enforcing adherence to parole terms, also making recommendations for revocation when terms are broken.

It needs to be mentioned that each of the three components of the criminal justice system is critical to the effective functioning of the larger system as a whole.

2.8.1 Formal criminal justice system process

The criminal justice system could be viewed as a process that takes in an offender through a series of decision points beginning with arrest and concluding with re-entry into the society. In the process, important decisions makers in the criminal justice system decide whether to maintain an offender in the system or to discharge the suspect without further action. The concept of formal justice process is important because it implies that every criminal defendant charged with a serious crime is entitled to the full range of rights under the law.

The formal criminal process in America includes:

- **Initial contact:** The initial and first contact with the criminal justice system takes place as a result of a police action. A case may be reported to the police or the police may observe an individual acting suspiciously. The reaction of the police is to visit the scene of the crime.
- **Investigation:** The aim of the investigating stage of the criminal justice process is to gather adequate or sufficient evidence, to identify the suspect and support a legal arrest. The nature of the crime or case will determine the duration of the investigation, for some, it could take some few minutes and some may take months.
- **Arrest:** An arrest occurs when a person is taken into custody and believes that the offender is not free to leave, at this stage the person is now a criminal suspect. An arrest is termed legal based on certain conditions namely one if the police officer believes that there is sufficient evidence; two, that a crime is committed and that the person who committed the offense.
- **Custody:** The moment an arrest is made; the detained suspect is considered in the police custody. At this point, the police may visit to search the suspect for weapons or contraband, interrogate the suspect in order to gain more information, find out if the person has accomplices or even encourage the suspect to confess the crime. Police would take every necessary step to obtain further evidence. Personal information of the suspect such as name, address, fingerprints, and photos.
- **Charging:** If the arresting officers and or their superior believe that sufficient evidence exists to charge a person with a crime, the case will be turned over to the prosecutor's office. Minor crimes (misdemeanors) are generally handled with a complaint being filed before the court that will try the case. For serious crimes

(felonies), the prosecutor must decide whether the case is to be for a preliminary hearing or grand jury. The decision to charge the suspect with a specific criminal act involves many factors which include evidence sufficiency, crime seriousness, case pressure and political issues as well as personal factors such as prosecutor's specific interests and biases.

- **Preliminary hearing/grand jury:** Before the commencement of a trial, the government must prove that there is a probable cause that the accused committed the crime which he/she is being charged for. The decision is rendered by a group of citizens brought together to form a grand jury, which considers the merit of the case in a closed hearing at which only the prosecutor present evidence. If the evidence is sufficient, the grand jury will issue a bill of indictment, which specifies the charges on which the accused must stand trial.
- **Arraignment:** Before the trial begins, the defendant will be arranged or brought before the court that will hear the case. Formal charges are read, the defendant of his /her constitutional rights (for example the right to be represented by legal counsel, an initial plea entered in the case (guilty or not guilty), a trial date set and the issue of bail is discussed.
- **Bail/detention:** Bail is a money bond levied to ensure the return of a criminal defendant for trial while allowing the person pre-trial freedom to prepare his or her defence. Defendants who do not show up for trial loses their bail. Those who cannot afford to put up the bail or who cannot borrow sufficient funds for it will remain in custody for the period of the trial.
- **Plea bargaining:** Soon after arraignment, if not before, defence counsel will hold a meeting with the prosecutor to explore the possibility of bringing the case to a close without trial. In some case, it could entail filing the case in court while the defendants participate in a community-based program for substance abuse or receive psychiatric care. Most commonly, the defence and prosecutor will discuss a plea bargain or agree to a request for a more lenient sentence. Almost 90% of cases end in plea bargain rather than a criminal trial (Senne & Siegel, 2002).
- **Trial/adjudication:** If an agreement cannot be reached, or if the prosecution does not wish to arrange a negotiated settlement of the case, a criminal trial will be held before a judge or a jury who will decide whether the prosecution evidence against the defendant is sufficient to prove guilt beyond a reasonable doubt. If a jury is

deadlocked, that is it cannot reach a unanimous decision, the case remains unresolved, leaving the prosecutor to decide whether it should be retried at another date. .

- **Sentencing:** If after a criminal trial, the accused is found guilty as charged, he or she will be returned to court for sentencing. Possible disposition may be a fine, probation, a period of incarceration in a penal institution or even death penalty.
- **Appeal/post- conviction remedies:** After conviction, the defence counsel can ask the trial judge to set aside the jury's verdict because he or she believes there has been a mistake in the law. An appeal may be filed if after conviction the defendant believes that he or she he or she did not receive fair treatment or that his or her constitutional rights were violated. Appellate courts review such issues as whether the evidence was used properly, whether a judge conducted the trial in an approved fashion, whether jury selection was properly done and whether jury selection was properly done and whether the attorneys in the case acted appropriately. If the court rules that the appeal has merit, it can hold that the defendant is given a new trial or in instances order his or her outright release.
- **Correctional treatment:** After sentencing, offenders are placed under the jurisdiction of state or federal correctional authorities. They may serve a probationary term, be placed in a community correctional facility, serve a term in county jail or be housed in a prison. During this stage of the criminal justice system, offenders may be asked to participate in rehabilitation programs designed to help make a successful readjustment into the society.
- **Release:** Upon completion of the sentences and period of correction, the offender will be free to return to the society. Most inmates do not serve the full term of their sentence but are freed through early release mechanisms such as parole or pardon or by earning good behavior. Offenders sentenced to community supervision simply finish their term and resume their lives in the community.
- **Post-release:** After termination of their correctional treatment, offenders may be asked to spend some time in a community correctional center which acts as a bridge between a secure facility and absolute freedom. Offenders may find out that their conviction has cost them some personal privileges such as the right to hold certain kind of employment. This may, however, be reversed for offenders that have proven their trustworthiness and willingness to adjust to society's rule.

From the above exposition on the workings of the criminal justice system in America, it could be concluded that there is an interplay and interdependence of the various agencies of the criminal justice system. In addition, whatever happens in one of the agencies has an effect on other agencies. For instance, if police do not arrest, investigate and file charges against a suspect, there will be no suspects to prosecute, no criminal trial and no one for the judge to sentence and no sentence for the corrections system to enforce and supervise.

2.9 Criminal justice system in Canada

The criminal justice system in Canada is based on the old English law tradition (Fedorhuk, 2016). The criminal justice system in Canada is designed to ensure public safety by protecting society from those who violate the law (Correctional Services Canada, 2008). This is done by stating the types of behavior that are unacceptable and defining the nature and severity of the punishment for a given offense.

One of the basic tenets of the criminal justice system in Canada is to ensure that an individual charged with a criminal offense is presumed innocent until proven guilty beyond reasonable doubt in a court of law. Under section 11(d) of the Canadian Charter of Rights and Freedoms, any person detained and/or charged with an offence has "the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal" Any individual charged with any criminal offence has a right to legal representation and a fair trial.

There are some certain legislation(s) from which the criminal justice system derives its authority. These are the Criminal Code of Canada, the Youth Criminal Justice Act and the Canadian Charter of Rights and Freedoms (Correctional Services Canada, 2008).

Primarily the Canadian criminal justice systems have the following primary functions:

- Investigation
- Laying of charges
- Prosecution
- Determination of guilt or innocence
- Sentencing
- Administration of the sentence

2.9.1 Components of the criminal justice in Canada

In Canada, the criminal justice systems comprise of four interrelated components that work together to protect the society from the moment a crime is committed until the offender is reintegrated into the society (Correctional Services Canada, 2008). They are

- Policing
- Courts
- Corrections
- Parole

It should be mentioned that each of these components is governed by legislation, specific to its role in the criminal justice system but they all have the potential to influence each other. In the next section, the researcher would highlight the roles of each of these components and the interrelationships between the various agencies

Policing: The law enforcement agency in Canada is called The Royal Canadian Mounted Police (RCMP). The responsibility of policing the Canadian criminal justice systems is within the jurisdiction of the federal, provincial or territorial and municipal governments. At the provincial and territorial level, it may be either the RCMP, working under contract to the provinces or territories or as in Ontario and Quebec, the provincial police. At the municipal level, the local police force provides protection.

The main function of the police is to apprehend offenders and in most provinces, to lay charges against the accused based on the criminal code. The police are the frontline of Canada criminal justice system law (Correctional Services Canada, 2008).

Courts: After the charge has been preferred against the offender, he or she is brought before a court of law by the crown attorney. In Canada, the courts have the judge, the crown attorney, and a defense attorney.

The proceeding of the courts is presided over by a judge. The presiding judge is essentially acting as an independent arbiter who adjudicates between two opposing known as an adversarial system. The judge determines whether the accused is guilty or not. He also decides the sentence that should be imposed. Whatever sentence is pronounced by the judge is guided by the minimum and maximum penalties laid out in the criminal code or if the offender is between 12 and 17 years old, by the Youth Criminal Justice Act.

In case any offender is given probation, it is the judge who sets the condition. The offender has a right to appeal a judgment even to the Supreme Court. The criminal code empowers the judges on their sentencing decisions, based on the principle that imprisonment should be a last resort for the most serious offenses. The implication of this is that most offenders do not end up in prisons in Canada.

Other personnel in the court system in Canada are the crown attorney and the defense attorney. The Crown attorney is responsible for deciding which charges the accused will face in court and for prosecuting those charges. The onus of proving the charges beyond a reasonable doubt is on the crown attorney, calling witnesses. The defense attorney defends the accused against the various charges presented by the crown attorney. He has a right to cross-examine witnesses produced by the crown counsel.

Criminal courts in Canada

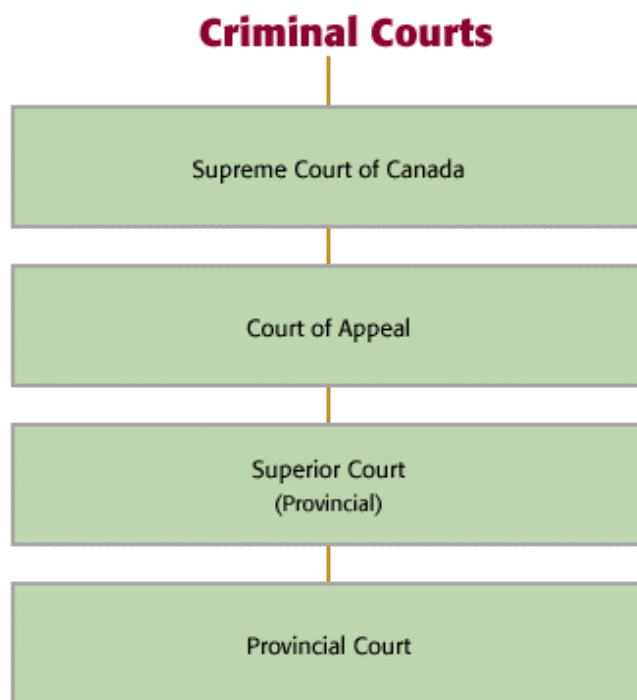


Chart of the criminal courts in Canada

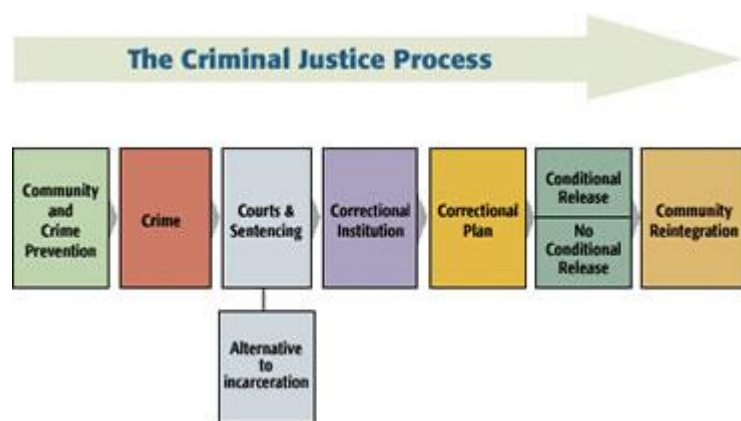
Source: Correctional Services Canada, 2008

Provincial courts deal with routine criminal cases where the accused may plead guilty. Superior or Supreme Courts try certain offenses or election offenses. It also hears appeals for provincial courts. Provincial appeal courts hear appeals on procedure and or sentence. Only courts above these are the Supreme Court of Canada must obtain 'leave to appeal'.

2.9.2 Corrections in Canada

Those involved in this aspect of criminal justice system administer the sentence handed over by the judges whether it involves incarceration or probation. Once an offender is found guilty, depending on the nature of the offense, he or she may be sentenced to a term in the federal, provincial/territorial correctional system (Correctional Services Canada,2008).

The Federal Corrections system deals with adult offenders (18 years of age and above) who have been sentenced to 2 or more years of imprisonment. This category of offenders falls under the responsibility of the Corrections Service of Canada which is governed by the Corrections and Conditional Release Act. The provincial and or territorial system deals with offenders serving a term of lesser than 2 years, youth offenders and all non-custodial sentences, that is offenders that their sentences involve probation and /or community service.



2.10 Criminal justice system in Australia

The criminal justice system in Australia has a purpose for the state to respond to crime, to secure benefits to wider society such as crime reduction. In addition, the state must redress imbalances caused by those people who take illegal disadvantage of another or diminish their human dignity. The criminal justice system in Australia is adversarial (also termed accusatorial), this implies that the two parties in the case – the prosecution and the defense bring evidence before a magistrate, judge or jury, each of whom acts as fact finders.

According to Daly (2011), the criminal justice in Australia comprise of various agencies, which are connected to each other; share certain objectives and have their own agendas. The agencies of the criminal justice system in Australia are the police, prosecutor, courts, community corrections and prisons. Each of these agencies is subject to 'legal regulation and administration' (Findlay, Odgers & Yeo, 2009). The implication of this is that while

representatives of agencies of criminal justice system such as the police are empowered to gather evidence and make arrests, they must do so in a lawful manner.

Police (Police Officers)

This agency of the criminal justice system is charged with responsibilities which include preventing crime, investigating crime, arrest and detain suspects. In addition, officers of this agency are also expected to maintain public order and control traffic.

Prosecution (Prosecutors)

After the police have finished with the investigation, it is the responsibility of prosecutors to sort out weak cases and keep strong cases. Prosecutors prepare cases for prosecution. They also prosecute the case in youth/children magistrates, district and supreme courts including preparing cases for prosecution. Next in line in the criminal justice system in Australia are the courts.

Courts (Justice of the peace, magistrates, and judges).

The courts are presided over by a justice of the peace, magistrates, and judges. Their responsibilities include making decisions on bail and remands (detention or not in pre-trial), protect the rights of the defendants, and preside over trial and plea process. Furthermore, they decide on guilt, sentence the defendant, hear appeals against conviction and sentence and provide public arena so that justice 'can be seen to be done'.

Next are the community corrections. This component of the criminal justice system in Australia is coordinated by community correction officers. They are statutorily charged with the following responsibilities namely, prepare a presentence report; provide information to the court on the defendant's appropriateness for bail; work with offenders that have probation or community sentences and supervise released prisoners or pre-release with the person in custody.

The final component of the criminal justice in Australia is the prisons. In charge of the prisons are correction officers. They are charged with the responsibility to hold people on remand (in custody) on the orders of the court; hold offenders who have been sentenced by the courts to a term of imprisonment, maintain appropriate conditions in custody. In addition, they provide activities that encourage learning and life skills and prepare inmates for release (Davies, Croall & Tyer, 2005).

2.10 Criminal justice system in the United Kingdom

The criminal justice system in the United Kingdom is one of the major public services in England and Wales (Trueman, 2015). The criminal justice system in the UK is responsible for detecting crime and bringing offenders to justice carry out the orders of the courts such as collecting fines, supervising community and custodial punishment.

The criminal justice agencies in the United Kingdom include the police, Crown Prosecution Service (CPS), the courts, the prison service, the probation service and the Youth Justice Service (Trueman, 2015). Also, Sanders, Young & Murton (2010) submit that the core agencies of criminal justice in the UK and Wales are the police, the CPS, the courts, the prison service and the probation service.

The work of these agencies is overseen by three government departments namely the Ministry of Justice, the Home Office and the Attorney General's Office (Smith, 2010). The Ministry of Justice oversees the magistrate courts, the Crown courts, the Appeal Court, the legal service commission and the National Offender Management Service (including prison and Probation). The Home Office takes a policy lead on crime and oversees the Police, counter-terrorism, focuses on community safety, crime prevention and early intervention with young people. The Attorney- General Offices oversees the Crown Prosecution Service, the Serious Fraud Office and the Revenue and Customs Prosecution Office (Trueman, 2015).

A highlight of the functions and interrelationship of the criminal justice system in the United Kingdom is done below:

The Police: In the criminal justice system of the United Kingdom, the police is the first contact for offenders and also a potential point of diversion away from the criminal justice system. The police are providers of community safety. The Police are charged with the responsibility to uphold the law, to prevent crime, to pursue and bring to justice those who break the law and to protect and reassure the community.

There are forty-three police forces across England and Wales responsible for the crime, collection of evidence and arrest or detention of suspected offenders. Once a suspect is held in minor cases, the police decide whether to caution them, take no further action, issues a fixed penalty notice or refer to the Crown Prosecution Service (CPS) for conditional caution or in more serious cases send the papers to decide upon the prosecution.

The Crown Prosecution Services (CPS): is the principal prosecuting authority for England and Wales acting independently in criminal cases investigated by the police and others. The mission statement of the CPS is to '*deliver justice through the independent and effective prosecution of crime, fostering a culture of excellence by supporting and inspiring each other to be the best we can*' (www.cps.gov.uk).

The CPS

- decides which cases should be prosecuted, keeping them all under continuous process review
- determine appropriate charges in more serious complex cases - advising the police during the early stages of investigations
- prepare cases and presents them at court using a range of in-house advocates, self-employed or agents in courts
- provide information, assistance, and support to victims

Courts: The courts in the United Kingdom are divided into magistrate and Crown courts. All cases are initially heard at the magistrate courts. There are some offenses that are less serious and can only be dealt with at this level. There are other cases that can be heard at either the magistrate or crown courts and more serious crime can only be dealt with at the crown court.

The prisons

In the U.K, it is the responsibility of the prison service to deal exclusively with offenders convicted and sentenced to a custodial sentence by the courts. The function of the prisons in the criminal justice system of the U.K is to expedite a judicial decision to deprive an offender's liberty in order to fulfill the sentence of a court. The role is distinct because it is primarily engaged in controlling and managing the offenders' behavior throughout their sentence. However, it is common to the other agencies within criminal justice in that it facilitates crime control and contributes to an offender's rehabilitation into society (the UK, Essays,2017)

2.10.1 The criminal justice process in the United Kingdom

In the United Kingdom, almost all the criminal cases begin with an offense being reported to the police. After the investigation, the police officer will recommend to the Crown Prosecution Service that the individual(s) be charged with a specific offense.

A decision will also be made as to whether the defendant is held in custody pending his or her bail application is dealt with. This decision is made by the magistrate based on information provided by the National Probation Service through pre-sentence reports, defense solicitor and Crown Prosecutor. If a defendant pleads guilty or is found guilty after trial, the magistrate or the judge (depending on the severity of the offense) will impose a sentence. The judge's decision or sentence would be based on a pre-sentence report on the defendant and the information, assessment, and recommendations. This presentence report is often prepared by the National Probation Service.

The range of sentence that could be imposed includes:

- conditional discharge
- fine
- community service
- suspended service
- a custodial sentence

National Offender Management Services (NOMS)

The National Offender Management Services (NOMS) is the overarching organisation responsible for managing offenders and reduce reoffending, with the possibility of both community and custodial services (NOMS Annual Report and Accounts 2013–2014). NOMS oversees the delivery of prisons and probation services in England and Wales.

Probation services are delivered by the National Probation Service and twenty – one community rehabilitation companies covering each part of England and Wales. The National Probation oversees the writing of all pre-sentence reports, conducts all initial risk assessments, and manages offenders who are deemed to be at high risk to the public.

Community Rehabilitation Communities (CRC) is responsible for the management of offenders who are assessed as to the low medium risk of harm to the public.

Probation officers work in a variety of roles and organise the different elements of community orders including unpaid work, group work programmes, and individual supervision and interventions. They also work with other public, private and voluntary organisation to provide offenders with help with accommodation, employment and education, drugs and debt advise.

Her Majesty Prison Service

There are one hundred and forty-two prisons in England and Wales (Clinks, 2018). The prison estate is categorised according to the level of security each provides. The high-security estates, eight of them, hold the most the most dangerous prisoners – Category A prisoners. The rest of the prison estates comprise Category B prisons, Category C (training) prisons, Category D (Open or resettlement) prisons.

There are some category B prisons that function as remand prisons, holding prisoners appearing before the court for either trial or sentence. Prisoners serving sentences less than 12 months usually remain in remand or local prison. Depending on the length of sentence and the type of offense, prison regimes will include opportunities for training, education, drug treatment and help with resettlement back into the community. For prisoners serving longer than twelve months, there is an expectation that relevant prison staff will liaise with the probation service in the prisoner's home area to implement plans for effective resettlement (Clinks, 2018).

2.11 Criminal justice system in France

The French legal system abides by the principle of unity of the civil and criminal justice system which means that the same court can hear both criminal and civil cases (Borricand, n.d). The criminal justice system in France is basically inquisitorial and continental justice model (shodhganga, n.d). The criminal justice system in France comprises of the police, judiciary (courts) and prisons.

The Police: The role of the police is generally to ensure that the laws are observed and enforced. Efforts are also directed at the prevention of delinquency. The police in France is under the authority of the Minister of Interior. The police have the power to arrest and investigate. Police can stop and arrest an offender and bring him or her in front of the public prosecutor if they observe an offense that is the process of being committed. The police have the power to keep a suspect under observation for 24 hours.

2.11.2 Criminal justice process in France

The criminal justice system in France has two procedural stages preceding the trial. These are the police stage and judiciary stage (Newman, 2010).

Police stage: The police conduct a preliminary investigation under the direction of the public prosecutor. This process involves a search for the suspect, a hearing of the suspect and an observation of the suspect, once arrested. During this investigation, the suspect is kept under observation for 24 hours which can be lengthened under authorisation of the public prosecutor. Another type of investigation takes place when the suspect is caught while committing their crime, police officers can make observations at the scene of the crime and relate their information to the public prosecutor.

The judiciary stage can be initiated by either the Public Minister or the victim, although the Public Minister decides whether the case should be brought before a judge or disposed of alternatively. The victim can also initiate prosecution by bringing a civil suit against the suspect, forcing the public prosecutor to take action.

Under the Chamber of Association, preparatory instructions for the case are given to an examining magistrate who has the power to proceed with the examination of suspects (under the law of August 24, 1993) the term 'accused' was replaced by the term 'put under examination'. The magistrate can interrogate, confront, and bring warrants against the suspect. They can also arrest the suspect and bring him or her before a judicial authority. Another set of instruction is given for the bringing of appeals. The examining magistrate reads the charges and the statement of the defense. Judges of the correctional court must explain reasons for their decision.

The Prosecutor: In the criminal justice system in France, the prosecutor is a very important organ. According to Shodhganga (n.d), public prosecution comprises of all acts of procedures whose primary aim is to bring the matter before the courts. The duties of prosecutors are not just bringing a matter to court, they must pursue the matter through effective prosecution until the verdict of the court. The prosecution agency in France is known as *Ministero Public or parquet*. Furthermore, prosecutors are members of the judiciary who are not only active in the course of the trial but also during the pretrial phase. Prosecutors play a significant role in the criminal justice system of France

Prison: There are five types of penal institutions in France (Kazemian & Catrin, 2012). Central houses receive offenders who have been sentenced to more than one year. Detention centers can also receive offenders with long sentences but are orientated toward the re-socialisation of offenders. Stop houses receive offenders with less than one-year sentence. Penitentiary centers are a hybrid of Stop houses and Central houses and receive offenders with long and short sentences. Semi – liberty center house offenders who can be released for short periods and time to go to work, school, professional training, or undergo medical treatment (Borricand, n.d).

2.12 Criminal justice systems in African countries

This section will highlight the criminal justice system in some selected African countries. The most criminal justice system in African countries has its origin from their colonial masters, little or not much has been done to effect changes to reflect the criminal justice needs and demands of post-colonialism. The criminal justice system of the following African countries namely, South Africa, Nigeria, Kenya, and Francophone countries would be reviewed with emphasis on the components of the criminal justice system and criminal justice process.

2.12.1 Criminal justice system in South Africa

The foundation of the criminal justice system of South Africa can be linked to the Roman Dutch and English law and has over the years has taken from a variety of respected international legal systems. However, the criminal justice of South Africa derives its authority from the constitution (Act No 108 of 1996). The criminal justice system in South Africa is aimed at law enforcement, the prosecution of offenders and the punishment of the convicted. The South African governments' approach to criminal justice is contained in the overarching 1996 National Crime Prevention Strategy (NCPS) which to some extent, still guides activities in the criminal justice sector

2.12.2 Components of the criminal justice system in South Africa

The criminal justice system of South Africa according to a book published in 2008 by the National Prosecuting Authority (NPA) consists of the Police, the prosecution service, the courts, the Department of Justice, the Department of Corrections, probation officers and social workers.

The Police: The police in South Africa are officially known as the South Africa Police Service (SAPS) and is the first contact of offenders with the criminal justice system. Their main

responsibility is to prevent crime, investigate and arrest suspected criminals. It is after the police investigation that a case could be prosecuted.

The Prosecution Service: Next in line in the criminal justice system is the Prosecution Service. In South Africa, the agency responsible for prosecution is called the National Prosecuting Agency. An officer known as a prosecutor (state prosecutor or public prosecutor) is assigned to bring a case against the accused. The responsibilities of the Prosecutor include guiding the police to collect the right evidence; present such evidence in court and argue cases. In addition, the prosecutor decides whether to prosecute or not, ensures that victims and witnesses are treated fairly, may divert cases to rehabilitation especially in case of juvenile first offenders. The prosecutor must also be able to prove any case beyond reasonable doubt before an accused can be convicted.

The Courts

The court in South Africa is next after the prosecutor has come to a conclusion that the accused is to be prosecuted is the court. The court is presided over by a magistrate or a judge. It is the magistrate or judge that can determine whether an accused is guilty or not. The South Africa courts operate an adversarial system which means that there will be two opposing parties (prosecutor and defense attorney) litigating with the magistrate or judge sitting as a neutral arbitrator or umpire.

There are different types of courts in South Africa where criminal cases could be tried. These courts are District courts, Regional courts, High Courts and Supreme Court of Appeal. Each of these courts has category of cases they can hear as well as maximum sentence they could impose.

District courts: The district court is the lowest court and is presided over by a magistrate. The district court can hear less serious cases such as drug cases, theft, drunken driving, and assault. The maximum sentence that a district court could impose is three years' imprisonment or a maximum fine of R60, 000 fines on each count.

Regional Courts: Regional courts are presided over by a magistrate and to hear more serious cases such as rape, housebreaking, kidnapping, and corruption. The magistrate in a Regional court can impose a maximum sentence of fifteen years and a maximum of R300 000 fine on each count.

High Court: The High court is presided over by a judge and hears very serious cases such as premeditated murder, serial crimes, serious commercial crimes and politically motivated crime. In addition, it could hear appeals and review cases from the district and regional courts. The High court has no limit regarding the term of the sentence it can impose.

Supreme Court of Appeal: This court is the final court in all matters except constitutional cases and is presided over by a judge. The court hears all criminal appeal cases from the high court. No lower court can object to the decision of the court.

The Department of Justice: provides accessible and quality justice for all. It is officially known as the Department of Justice and Constitutional Development.

The Prison System: After the courts have found an accused guilty and he is sentenced to a prison term, the next in line in the criminal justice is the prison. The department in charge in South Africa is officially called the Department of Corrections. Services They are charged with the responsibility of ensuring that the sentence pronounced by the courts is carried out. The goals of the Department of Corrections Services include the efficiency of the justice system is improved through the effective management of remand processes; society is protected through incarcerated offenders being secured and rehabilitated and society is protected by offenders being reintegrated into the community as law-abiding citizens(www.gov.za/about-government/government-system/justice-system/correctional-services).

2.12.3 The criminal justice process in South Africa

In South Africa, the criminal justice process commences when a crime is reported to the police or if a crime is discovered by the police. The police open a docket and investigate the crime. A docket is basically a file in which all evidence gathered including complainant statement is kept. The complainant is requested to make a statement. This statement is a very crucial part of the process as it could influence the process later on. At the completion of the investigation, the docket is transferred to the prosecutor. The prosecutor goes through the docket reviewing the evidence. If the prosecutor is satisfied that there is sufficient evidence to prosecute, then the case is put down for trial and a court date is scheduled at the discretion of the court.

The trial will commence at the court with the prosecutor reading out the charges against the accused who will be required to plead with them. The accused is presumed innocent until proven guilty. The onus to prove the charges beyond reasonable doubt lies on the prosecutor. The accused is expected to have a legal representation known as an attorney. In criminal cases,

if the accused cannot afford private legal representation, an attorney could be provided by Legal Aid South Africa, a state agency which provides legal services for people that cannot afford legal attorneys.

The presiding officer who is either a magistrate or judge listens to both the prosecutor and the defense attorney. The magistrate or judge is expected to be a neutral arbiter and ensure the trial is according to the rules. After both parties have made their submission, produce evidence, called witnesses and have closed their cases. The judge would review the submissions, the evidence and based on this will give his judgment. If an accused is found not guilty he or she is discharged and acquitted. On the other hand, if the accused is found guilty, he or she is sentenced by the magistrate or judge. The sentence could include imprisonment, fines, a suspended sentence, correctional supervision, community service or a combination of the sentence.

An accused that is sentenced to a term of imprisonment is taken to a prison or correction center. The goals of the Department of Corrections include the efficiency of the justice system is improved through the effective management of remand processes; society is protected through incarcerated offenders being secured and rehabilitated and society is protected by offenders being reintegrated into the community as law-abiding citizens.

Another method of handling criminal cases in South Africa is through Alternative Dispute Resolution (ADR). This basically entails the accused and complainant deciding on a mutual outcome facilitated by a neutral party (usually, the prosecutor). The ADR is usually reserved for a less serious crime such as assault, malicious damage to property, negligent driving and less serious theft. Although, it has also been used for more serious cases. For ADR to be used, the accused must take responsibility and agree that he is guilty.

2.13 Criminal justice system in Nigeria

Nigeria as a former colony of Great Britain inherited the English common tradition. In Nigeria, the criminal procedure is based on an adversarial approach with the burden of proof most commonly placed on the accused. The criminal justice system in Nigeria derives its legal foundation from the 1979 constitution as amended. Aside from the constitutional provisions, the Nigeria legal system is divided into subsystems which are composed of various laws in force both at the state and federal levels (Babalola,2014). There is no uniformity of laws governing criminal laws and procedures in Nigeria, though the criminal justice system in all

the states of the federation is similar with some differences in the law applicable in the Northern states.

The criminal justice system in Nigeria is composed of the police, the judiciary and the prison.

The Nigerian Police Force: In criminal justice system in Nigeria, the first contact a defendant has with the system is usually with the police or law enforcement agents, that investigate the suspected wrongdoing and make an arrest. In this case, the Nigerian Police Force (N.P.F) is given jurisdiction to act towards the process of arrest and investigation bestowed on them by virtue of the police act (Onwuchekwe, 2015). Section 4 of the Police Act provides for the role of the police as follows:

'The police shall be employed for the prevention and detection of crime, apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged and shall perform such military duties within and without Nigeria as may be required of them by or under the authority of this or any other Act'

Section 4 of the Police Act encapsulates the role of the police and makes it clear that the first and foremost duty of the police is to prevent and detect crime as well as to apprehend offenders (Obidimma, n.d). The police could also play the role of a prosecutor in court; however, the Administration of Criminal Justice Act 2015 removed the prosecutorial power of the police officers who are not policemen.

The Judiciary: The next in line in the criminal justice system in Nigeria is the judiciary represented by the courts. The courts in Nigeria can be categorised broadly into Federal and state judiciary. For the Federal Courts, there is the Supreme Court, which is the highest court in the country, the Appeal Court, Federal High Court, High Court of the Federal Territory and the Sharia Court of Appeal. In each of the 36 states, there are the State High Court, Court of Appeal and Customary Court of Appeal. Each of these courts have their level of jurisdiction. The courts are presided over by judges and their functions include

- determining whether there is sufficient reason to hold a suspect brought in by the police, whether to grant bail or for the accused to be remanded in prison custody,
- they supervise the actions of prosecutor and defence,
- presides over pre-trial, hearing and determine crucial issues such as when evidence is to be admitted,

- they serve as an umpire, theoretically, they do not have any interest in any matter brought before them, they are expected to be impartial,
- monitor all activities of the trial making sure that the defendant's constitutional and statutory rights are protected, that all rules and regulations are followed and that all participants and spectators behave accordingly (Dada, Dosunmu & Oyedele, 2015).

The Nigeria Prison Service: Another arm of the criminal justice system in Nigeria is the Nigeria Prison Service (NPS). NPS is under the Ministry of interior and operates prisons in Nigeria. The NPS operates as a unified national structure under the command of the Controller-General of Prisons (Nigeria Prison Service, 2016).

The Nigeria Prison Service performs the following functions

- keeping safe custody of convicted persons and suspects as well, execute sentences passed on individuals by the courts
- ensuring the reformation and rehabilitation of inmates through moral training, education and offering inmates opportunities to develop other potentials and skills for effective integration into the society upon discharge
- ensuring the welfare of inmates through the provision of good health care, feeding, clothing and recreational facilities in order to create the enabling environment for reformation and rehabilitation programs

Prisons in Nigeria are categorised into Maximum Security Prison, Medium Security Prison, Female Prison and Borstal stations.

2.13.1 The Criminal justice process in Nigeria

The Nigeria Police Force: The NPF is the first contact an accused has with the criminal justice system. Members of the NPF has the power to arrest, investigate, charge a suspect to court, arrange for witnesses, gather evidence and seek legal advice from the Director of Public Prosecution (DPP). In some cases, the police can act as prosecutors but the ACJA (2015) has removed the power of the members of NPF to prosecute cases in courts. The police also have the power to ask the court to remand a suspect in prison custody pending the conclusion of investigation.

Prosecution: In Nigeria, there are personnel and institutions of government involved in the public prosecution of criminal offenses. The Ministry of Justice both at the state and federal

levels are at the forefront of. In most cases, personnel of these ministries in the Department of Public Prosecution (DPP) conducts prosecution of criminal cases (Peters, 2005). Section 106 of the ACJA stipulates that prosecution of all offenses in any court shall be taken by

- a). The Attorney General of the Federation (AGF)
- b). Legal practitioners authorised by the AGF
- c). A legal practitioner authorised by law.

The Attorney General of the Federation or of the States is the chief prosecutor. He is conferred with the powers to initiate, conduct, take over or discontinue any criminal prosecution in any court of the land in the country except in the court-martial (Peter, 2005). The DPP and other counsels assist the AG in carrying out his duties. In Nigeria, there are other institutions and agencies of government which is also empowered to conduct the public prosecution. These agencies include National Drug Law Enforcement Agency (NDLEA), National Food Drug Administration and Control (NAFDAC), the Independent Corrupt Practices and Related Offenses Commission (ICPC), and the Economic Financial Crime Commission (Babalola, 2014:131).

The Courts

The courts preside over the adjudication of cases under the control of a judge or group of judges as the case may be. The court through the judge plays a very significant role in the criminal justice system in Nigeria. For instance, they determine if a suspect is to be granted bail or remanded in prison custody, what evidence, to admit or reject, supervises the conduct of both the prosecutors and the defense lawyers. They ensure a fair hearing and impartial administration of justice and they sentence offenders through their judgment. Cases may be brought before the court by the police and the DPP.

The Prison: In the criminal justice system in Nigeria, the prisons are managed by the Nigeria Prison Service. On the order of the courts, suspects could be remanded in any prison. The prison officers could only detain if there is a detention order from a court. From this point, the accused is under the custody of the prison. The NPS ensures safety and well being of the suspects, produces the suspect in court as at when expected by the courts. In cases where the court has sentenced an offender to a prison term, it is the duty of the NPS to enforce the sentence

imposed by the courts. It is also the responsibility of the NPS to ensure the rehabilitation and reintegration of the convicted persons.

2.14 Criminal justice system in Kenya

The Kenyan legal system has evolved over the years from the inheritance of its English common law tradition. Common to all English common law countries Kenya legal system is adversarial. The basis for the criminal justice system is laws passed by colonial masters after Britain declared Kenya a crown colony. The purpose of the criminal justice system in Kenya is to attain societal peace and prosperity by advocating for respect of the rule of law (Onyango-Israel, n.d)

The main components of the criminal justice system are, the police (investigation and arrest), the judiciary (judicial procedure), the probation and aftercare service (community treatment), the prison service (reformation, rehabilitation, and reintegration).

The Police: The police force in Kenya is referred to as The Kenya Police Force. The Commissioner of Police who is appointed by the President oversees the affairs of the Kenya Police Force. The police are the first contact with the criminal justice system in Kenya. They have the power to arrest, stop or apprehend a suspect with or without a warrant although the law requires a probable cause to exist. An arrest can be made at the scene of the crime or after a citizen made a report of a crime. The police also have the power to investigate the crime.

Prosecution: which is the second level in the criminal justice system in Kenya is conducted by a state official known as a prosecutor. The Director of Public Prosecution (DPP) handles mostly serious cases such as murder, armed robbery, and drug smuggling. All other prosecution is conducted by the Investigating Police Officer. Often, the DPP appoints senior police officer(s) who acts as prosecutor in a criminal case. The prosecutor at the magistrate court is usually a senior officer who has been trained for the position but is not a certified lawyer.

Courts: The court in Kenya has five levels namely the court of appeal, the high court, the resident magistrate courts and the traditional courts/ native tribunal (Ghai & Mc Austlin, 1970; Nelson, 1994).

Court of Appeal: The Kenya Court of Appeal serves as the Supreme Court. It has the final appellate jurisdiction in both criminal and civil cases. The Court of Appeal does not sentence

an offender. It is a court of review and upholds the lower court's decision or orders lower courts to retry a case.

The High Court: has original jurisdiction for certain crimes and hears appeals from lower courts. A judge presides over the High court and has the power to sentence a murderer to death, and can sentence an offender to life imprisonment (Gertzel, et .al, Kenya Gazzette, 1967).

Resident Magistrate Courts: The Resident Magistrate court is presided over by either a senior resident magistrate or a magistrate. There is a resident magistrate court in each province which can hear both serious and not serious criminal cases. Appeals from this court are brought to the High court. The Resident Magistrate court is divided into first, a second and third class which differ according to the severity of punishment they are empowered to impose (Gertzel, et.al, 1969). A senior first-class Resident Magistrate can impose a sentence of 5-10 years in prison. A junior first class and second class Resident Magistrate cannot impose a sentence of more than 5 years and 1 year respectively.

District Magistrate Court: The District Magistrate courts are based at every district headquarters. There is District Magistrate court in every province. These courts hear cases involving African customary laws. A District Magistrate cannot impose a prison term exceeding one year.

A range of penalties that could be imposed by Kenya courts ranges from community service, probation, fine to corporal punishment, determinate prison sentence, life imprisonment without parole and death penalty (Nyachae & Kinuthia, 1993).

An accused person who is found guilty is sentenced to imprisonment in one of the one hundred and eight prison institutions in Kenya.

Prison: The next component of the criminal justice system is the prison. The prison system in Kenya is under the authority of Kenya Prison Service. According to Onyango (n.d), the primary responsibility of the prison in the criminal justice system of Kenya is to contribute to public safety and security by ensuring safe custody and social rehabilitation of offenders for community integration.

Kenya has one hundred and eight prison institutions, of which eighty-seven are for male offenders, eighteen for female offenders, three for juvenile offenders, two Borstal institutions and one Youth Correction Training Centre (YCTC).The prisons in Kenya has been classified

into different categories namely principal prisons, maximum security prisons, medium security prisons, short sentence and or minimum security prisons, district prisons, farm prisons, women's prisons, remand prisons and young offenders prisons (Krecher,1981).Principal prisons are used for extremely violent offenders such as armed robbers, prisoners sentenced to death or life imprisonment. Maximum Security prisons are also used for dangerous criminals and long-term prisoners (Abreo, 1972; Krecher, 1981; Nyachrae & Kinuthia, 1993). Two women prisons are used for very dangerous offenders while less dangerous female offenders are incarcerated in facilities close to their town of origin. Detention camps in rural towns for a person convicted of trivial offenses, inmates at detention camps can remain there for a maximum of four months.

Another type of correctional program is an alternative to short-term interaction called Extra Mural Employment Scheme. The offender lives at home and works on local or national projects and is supervised by a district official (Krecher, 1981; Nyachare & Kinuthani,1993).

2.14.1 Criminal justice process in Kenya

The criminal justice procedure in Kenya starts with the police. A criminal case is reported to the police or discovered by the police. An arrest is made by a police office; the offender is brought to the nearest police station for questioning and investigation, especially regarding the motives of the crime. The police have the discretionary power to determine which case to be prosecuted in court. The suspect may be detained at the police district headquarters pending the filing of a formal charge.

The District Magistrate court is the starting -of- point for most criminal cases. The prosecutor as a representative of the state studies the case and designs how to present the case in court on the day of trial. At the court, there is usually a preliminary hearing during which both the prosecutor and defense present their cases, witnesses may be introduced. At the second hearing, this is the main trial of the case; the prosecution presents all of the evidence to prove that the defendants committed the offense. The defense attorney may plead to the magistrate to dismiss the case or alternatively plead for mercy if the prosecutor's evidence indicated that his clients committed the crime beyond a reasonable doubt. The magistrate will sentence the accused according to the prescribed law. A range of penalties that could be imposed by Kenya courts ranges from community, service, probation, fine, corporal punishment, determinate prison sentence, life imprisonment without parole and death penalty (Nyachae & Kinuthia,1993).

For accused that are declared guilty and are sentenced to a term of imprisonment, he or she is taken into prison custody to serve the sentence pronounced by the judge.

2.15 Criminal justice system in Francophone countries

Francophone African countries are countries that were colonised by France. The legal system of eighteen sub-Saharan African countries is derived from the Roman law or civil law that was introduced by the British.

The states with the French legal heritage include:

- The former French West Africa: Benin, Guinea, Cote d'Ivoire, Mali, Mauritania, Niger, Senegal and Burkina Faso.
- The former French Equatorial Africa: CAR, Chad, Republic of Congo, Gabon, Madagascar
- The former League of Nations mandates: Togo and Cameroon

At independence all Francophone African countries adopted the French criminal process as a whole, over time; there was a trend in all these countries to adapt to local societies, local political conditions and local resources (Malejacq, n.d)

2.15 Chapter Summary

In this chapter, the researcher discussed the systems theory as the underlining theory to offer an explanation of the criminal justice system this became imperative taking into cognisance that various agencies and institutions of the criminal justice system are dependent on one another and work together towards achieving a common goal of administration of justice. In addition, this chapter defined the concept of the criminal justice system, reviewed the origin of the criminal justice system, described the components of the criminal justice system, and the government structure. Furthermore, an explanation of the criminal justice system, the components of the criminal justice system and the process in the United State of America, Canada, Australia, the United Kingdom, and France was made. Likewise, a similar exercise was conducted for some African countries namely South Africa, Kenya and Francophone countries. It was observed that the criminal justice system of this countries are similar and is composed of the police, judiciary and the prisons. With regards to the African countries, they derive their pattern from the colonial masters

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Chapter Three

Historical Development of Punishment

3.1 Introduction

This chapter highlighted the concept of imhistorical development of imprisonment and punishment, tracing the history of punishment from the primitive society to Hammurabi's code biblical era, the Middle Ages, the Renaissance, and transportation of prisoners as a way of punishment. This chapter also identified early reformers and their contributions, the development of prisons in America. Furthermore, the philosophy of punishment was also enumerated as well as the various theories that have been used to explain the rationale behind the punishment.

The underlying principle of this chapter is to give an insight of the origin of imprisonment with a view to giving us an understanding of where we are coming from and other major developments. This will offer us an opportunity to have a better understanding of current situations in prison all over the world in general and Africa in particular.

3.2 Concept of Punishment

Punishment could be described or defined from different perspectives, hence no uniformity in the definition of punishment. However, there are some basic components or elements that can that can distinguish what is meant by punishment. According to Primoratz (1989:1) punishment is '*an evil deliberately inflicted 'qua (as) on an offender by a human agency which is authorised by the legal order whose laws have been violated*'. From this definition by Primoratz, certain elements of punishment could be deduced:

- Punishment is pain or harm (suffering) inflicted on an offender
- In contemporary times, pain can be said to be no longer part of the punishment. The basis for employing the word 'evil' is to indicate that punishment should indicate an experience that is unpleasant that people will not want to go through.
- Recognises the fact that an offender is someone who has come against stipulated laws
- It was made clear that an offender is a person who has transgressed against the law. In this wise offense is therefore differentiated from behavior or acts that could be described as harmful or antisocial.

- An action taken against an offender cannot be regarded as punishment if the action is self-inflicted by the offender, it must be by a human agent. It must not be accidental, hence the action must be a deliberate pain
- Punishment can only be imposed by a person or group of persons who have been empowered to do so by a legal authority.

Benn, Flew & Hart in Baird & Rosenbaum (1988) in their own definition of punishment identified five key elements. These are that punishment:

- Implies the element of pain and unpleasant consequences
- Follows the breaking of a specific law
- Is applied to an offender
- Is a deliberate suffering caused by a human agent and not by the offender himself or herself?
- Can only be administered by a person who has the power to do so.

In defining punishment Pollock-Byrne (1989:126) also distinguishes the elements of punishment

- It implies two persons- the one who inflicts the punishment and the one that is punished
- A measure of pain or suffering is administered to the person who is punished
- The action of the punisher is authorised by law
- The person being punished has been tried and found guilty of a commission or an omission that is contrary to the law.

According to Bedau (2005) punishment may be defined as *‘an authorized imposition of deprivations — of freedom or privacy or other goods to which the person otherwise has a right or the imposition of special burdens — because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent’*

From the four different descriptions of punishment above, there are some basic components that an action must have before we can call such an action punishment. Taking a cue from the above descriptions, the researcher wishes to define punishment *‘as any form of action backed by law, painful or an unpleasant experience in nature that is inflicted on an individual, by a person empowered by law on someone who has been found guilty of transgressing a law’*.

3.3 Historical Development of Punishment

In order to have a clear perspective and understanding of the concept of punishment, there is a need to review the historical development of punishment from the primitive times to the contemporary times. This would give an insight into the origin, various developments, and transformation that has happened over the years.

3.3.1 Punishment in the primitive societies

At this time, the various measures that were taken to find solutions to legal problems that could arise as a result of members of the society going against the law of the community differ from one community to the other. While some have legal institutions and framework that are close to what is obtainable these days, others have no formal legal institution. For the latter group, it does not suggest that they were living in anarchy.

In these societies, there existed a group of autonomous political units on the basis of blood relationship or local clans. The existence of units like clans was a right on its own because such units were not subject to any higher political authority or legal institution. In this respect, they can be categorised as the sovereign states of today. Infringement of the interests of a member of the group by members of another group was treated with hostility by all the members of the injured group who sought compensation and took revenge. This taking of revenge was known as blood feud and differed from one group to group.

A major feature of a blood feud in the primitive society was that retaliation could be directed not only against the opponent but also against any member of the group. This implies the doctrine of collective responsibility.

A blood feud was based on six principles namely:

- The injustice that was committed was regarded as a collective injustice. The revenge was therefore not the settlement of a personal matter – any injustice against any member of the group was regarded as an injustice against the whole group
- A blood feud was based on restitution and not so much on punishment
- Responsibility for an act was the group's responsibility. In other words, if the real offender could not be traced, revenge could be taken on any member of the group to which the offender belonged

- The offender's motive for committing an act was irrelevant. It did not matter whether the act was premeditated or an accident
- The group had no interest in injustices to members of other groups
- Restitution was also collective. In other words, all members of the group were obliged (bound) by custom to avenge an injustice to any of the group's member

The biggest disadvantage of a blood feud was that it did not put an end to disputes. Revenge led to retaliation because one group did not always accept that the matter had been finally settled by punishing the first offender. Gradually, however, blood feud diminished in intensity and amendments were introduced until the punishment of offenders was eventually taken completely out of family members. According to Wikipedia (2018) the practice of blood feud as a mode of punishment has been abolished due to more centralized societies that has made law enforcement and criminal law take charge for punishing individuals who come against the law.

3.3.2 Right to asylum

After a while, a distinction was made between deliberate action and accident. To allow for the opportunity to determine whether the injustice had been committed deliberately or by accident, fugitives could seek asylum in certain holy places until the matter has been investigated. In Biblical times, the altar in the temple was such a place of peace and safety. Examples of this include Adonijah (1Kings 1:50-53) and Joab (1Kings 2:28-35) who fled to the temple. The free cities of Biblical times, too offered fugitives temporary protection from blood avengers. As long as fugitives stayed in those places, blood avengers could do nothing to them.

3.3.3 Exception from responsibility

Another positive step in the disappearance of blood feuds was the recognition of the degree of responsibility. Prior to this period, all the offender's family members were subject to the revenge of the victim's blood relations. Gradually, however, distant family members were exonerated from the responsibility of retaliation.

3.4 Retribution

In due course the method of retribution, that is the principle of reparation or compensation, developed in the place of blood feuds. The implication of this is that the offender had to pay a sum of money to the victim or victim's family. The amount of compensation usually depended

on the age, rank or status and gender of the injured party. A freeman (a citizen who had the right to practice a free profession) carried a higher value than a slave, and a man worth more than a woman. The right to compensation was predominant among the ancient Hebrews and Arabic tribes and also in the old Saxon laws. For example, a person who had knocked out someone's front tooth had to pay an equivalent of 80 cents in compensation to the victim, and in the case of a molar or an eyetooth, the equivalent of R1.50. The compensation was paid directly to the victim or his or her next of kin and not to the state.

3.5 The truce of God

During the Middle Ages, when bloodshed and blood feuds were the order of the day, the church restricted the practice of blood feuds. It was not prohibited, but certain persons such as unharmed farmers and religious persons were protected from raids of bloodthirsty and belligerent Germanic barons. This measure was aimed mainly at the inconstancy of the nobility. Initially the measure did not bear much fruit, but later it did play an important role in regulating law and order. In the early 11th century, the church introduced laws that forbade all bloodshed, wars and disputes that arose between Saturday afternoon and Monday morning.

In 1041, a ceasefire was introduced between Wednesday evening and Monday morning and also during feast days. Church office-bearers were permanently safeguarded against the attacks of the nobility and even pilgrims and women were later included in the truce. This so-called truce of God reached its peak in the 12th Century, but from the 13th Century it began to diminish in importance, especially as the king's power started to increase and a strong state authority emerged.

3.6 The punishment of crime by the state

With the emergence of strong and virile central governments, blood feuds as a means of restraining unruly elements in society were replaced by the action of officials or organisations dealing with crime. Although the punishment of criminals only passed to the state during the 13th century, there were penal codes in existence during the 13th century; there were penal codes in existence earlier than that. Among the best known was that of Hammurabi of Babylon (2000BC).

3.6.1 Hammurabi's code

One of the earliest written remnants of ancient penal policy directives is the code of Babylonian king Hammurabi. The code is noted to be one of the earliest and most systematised efforts to achieve a social and ideological objective by means of technical procedures. The code covered a broad spectrum:

- It was an instruction manual for judges, police officers and witnesses
- It dealt with the rights and obligations of spouses, women, and children,
- It was a system of regulations for wages and prices
- It was a code of conduct for government officials, doctors and merchants
- It stipulated the specific responsibility, the particular act that was prohibited and the exact punishment to be imposed.

The code is a historical milestone which had proactive as well as retroactive significance. The code was noted to have brought many reforms in practices that were in place then and introduced many innovative measures.

The aims of the Hammurabi code include

- Reinforcement of state authority: The code empowered or permitted comprehensive state intervention in the finest facets of social and economic life. The enforcement of the regulations was based on a system of punishment which could be imposed by the state. This brought an end to people's independent actions such as blood feuds and revenge while any form of self- assistance in civil cases was severely punished. The code had several political and administrative objectives and was intended to reinforce the king's power; the eradication of self-action or blood feuds. There was also provision for the punishment for bribery and corruption which was severe for example a judge who altered his judgment after pronouncement after it has been delivered was relieved of his post and had to pay a fine twelve times that of the one he had imposed.
- Protection of the weak against the strong: Widows were protected against exploitation, pregnant slaves against beating by impatient masters; and subordinate officials against superiors. The principle was that punishment would be imposed on anyone who exploited an inferior or a subordinate.
- Restoration of the relationship between offender and victim: The act, as well as the perpetrator, was abhorrent to the Babylonians. The criminal act had to be erased and

matters restored as if the crime never occurred. When this was not possible, such as when the act resulted in the loss of life, the only option of restoration was for the offender to be forced to suffer exactly the same loss as the victim. For example, if a victim lost an eye, the offender also had to forfeit an eye. According to section 200 of the code, if a nobleman should knock out the tooth of someone of equal rank, the assailant's tooth should also be knocked out. However, if a noble man were to knock out the tooth of a subordinate, he would have to pay a fine of half a silver piece. Babylonian values hold the view that knocking out a nobleman's teeth in exchange for that of a subordinate would be a violation of the principle of equality. In principle, the relationship between the offender and the victim had been restored, nevertheless, revenge was the dominant motive in punishing serious offenses

Forms of punishment: Aside from imposition of fines, there were other four types of punishment that were prevalent in Babylon. These are the death penalty, mutilation, branding (burning a mark into the flesh) and banishment. Banishment was only imposed if a father is found guilty of incest. The death penalty was carried out in various ways such as burning, drowning and impaling on a sharp pole. About thirty-seven specific crimes were punishable by death, including rape and abduction, murder was not mentioned in the code. Mutilation was the punishment for a slave's disrespect for a master or an adopted son's disrespect for his father, or for a doctor's fatal negligence

3.6.2 Mosaic period: Following the Hammurabi legal code was the Mosaic period. The legal code in this era was less sophisticated than its predecessor. Mosaic code consisted mainly of crimes against religion. Although there are some similarities between the Hammurabi code and Mosaic codes there was one main and basic difference between the two systems. This was a drastically changed relationship between religious (ecclesial) and secular (worldly) power.

In Babylon, religious power was subject to the secular power. Purely religious interest was unknown to Hammurabi, but every transgression of religious interest was at the same time a transgression of a state or secular interest. In contrast with this, the Mosaic code consisted mainly of crimes against religion. For some of these offenses, an alternative punishment known as *kerith* was imposed. This was a special ancient Hebrew sanction that combined forgiveness with a self-imposed curse. The consequence of this curse, which was pronounced by the church authority and solemnised by God, was a slow death in exile.

Apart from the death sentence and kerith, mutilation and scourging were also mentioned. This could be referred to as corporal punishment. The Mosaic code retained the right to retaliation by the victim's tribe as punishment for murder. Nonetheless, the Biblical support for the principle of lex talionis (an eye for an eye and a tooth for a tooth) the perpetrator's intention was still taken into account.

Crimes against God and against people were regarded as serious; the general belief was that if a criminal was not identified and punished, the whole community both guilty and innocent would incur the wrath of God. The aim of most Mosaic punishment was targeted at pleasing the victim and also eliminating the contamination caused by the crime. This dual-purpose ensured the power of the church authorities especially in times of emergency. The privileged status of the priesthood led to a continual struggle between the religious and the secular authorities for political power.

3.6.3 The Roman Empire

In the period of Roman Empire, the Roman state had a formal code of civil and criminal procedures, a system of legal training with state supported law schools and strong tradition of lawyers. During the era of the Roman Republic and the early Roman Empire, the criminal procedure was a quasi-private prosecution. Both parties argued their own cases in a lawsuit, and there was no need for an official prosecutor, in this way the state maintained complete impartiality.

The Romans administered most forms of punishment that existed previously and they also administered many different forms of punishment. Various forms of temporary or permanent humiliation were familiar such as lowering of status to that of a slave, branding on the forehead and having someone lead minor offenders around, proclaiming the nature of crime out loud. Mutilation was also commonly used. Fines and forfeiture of property were especially popular and rulers enriched themselves at the expense of prominent people who had fallen into disfavor. Imprisonment gained prominence at times when there was a shortage of labor in the mines and on the galleys. Noblemen were also banished and strong young offenders were sentenced to be bullfighters during the Roman games. From the above description, it can be seen that punishment was administered freely during the Roman era.

3.6.4 The Germanic invasion of Rome

The laws of the Germanic invaders of Rome differed radically from the well-developed legal system of the Romans. For instance, the system of private prosecutors, which had prevailed in the early Roman Republic, was still in operations amongst these tribes. Though Germanic invaders were aware of the existence of the laws and the differences they made attempts to impose their own laws, however, the system did not survive because it was only effective for itinerant people and after a while, the Roman law began to reassert itself.

This led to the rediscovery of the codification (this means that the various scattered laws were synthesised into one law book) of Roman law as compiled by Justinian. Though the Romans were defeated in military terms, Roman law became prominent one more time. The only Germanic tribes that were not affected by Roman law were those of Northern Europe and Scandinavian-including the Angles and the Saxons. The earliest tradition of Germanic law points to the existence of a society where social control was in the process of shifting from private revenge to group arbitration.

Originally the death penalty and banishment were the punishments for religious and tribal crimes. The priests usually act as judge and executor of the punishment. The executions were often regarded as holy because they were intended to appease the gods and to ward off the contamination of the whole group. In cases where not only gods were provoked but individuals were also harmed or prejudiced, the individual or their families were frequently allowed to execute the punishment.

3.6.5 The feudal period

The feudal period and the Middle Ages ushered in a dark period for the law, crime was rampant. The disintegration of kingdoms into innumerable feudal communities or feudal systems, each with its own armed forces and taxes produced fertile breeding ground for anarchy. The feudal lords were the upholders of law and order as well as the violators of the truce. Even though the Germanic law was the basis of justice in the Middle Ages, the prosecutors were once again the disadvantaged, and anyone who had no blood relatives could not make use of the law.

In the Middle Ages, the judiciary tried to take the judgment of evidence out of human hands and leave it to God. To achieve this, two techniques were employed; judgment (discernment) and trial by battle. The trial by battle was very popular among the nobility because it combined forces with an appeal to God. An extension of trial by battle was that parties that could not act

themselves could hire someone to engage in the fight for them. At the onset, this privilege was reserved for women, children, the elderly and the weak but later anyone who could afford it could make use of it.

Just like in trial by battle, in judgment (discernment) it was believed that divine pronouncement would reveal the guilt or innocence of the accused. The specific form of judgment would reveal the guilt and innocence of the accused. The specific form of judicial judgment differs from place to place. For example, the accused would be exposed to dangerous situations, such as submersion in water ('trial by water'). In this case, the accused were bound and thrown into a river. If they survived, it would be regarded as proof of innocence, but if they sank and drowned, it was taken as a sign of their guilt.

The punishments worsened in each successive century of the Middle Ages. By the beginning of the Renaissance, the old lenient systems of fines and compensation of the Germanic tribes had been almost completely replaced by a bloodbath. By the 14th century, the death penalty was the most common punishment. Other well-known punishments in the Middle Ages were mutilation, humiliation, corporal punishment, banishment, forfeiture of property and, occasionally imprisonment.

3.6.6 The Renaissance

The history of punishment moved from the Middle Ages to the Renaissance, the focus in this era was no longer punishment but the method of trial. The most important forms of punishment that had previously been administered remained. The centralisation of political power during the Renaissance brought about a standardisation in the legal process but the guilt of the offender was still accepted and all that had to be decided was the punishment. Despite this situation, there was still an attempt to ensure a fair trial. In the course of time, it was believed that the final proof could be obtained only if the accused confessed their guilt; such a confession was stipulated as a prerequisite for conviction. If the accused did not want to confess their guilt, they were tortured and were acquitted only if they could endure torture. From the beginning of the 18th century, opposition to this method of trial slowly grew until it reached a climax in 1764 with the publication of Beccaria's essay on crime and punishment. This opened the way for reform, shortly thereafter; the criminological and penological sciences came up.

3.6.7 Gaols

In the twelfth century specifically in 1166 the king of England, King Henry II having observed that some countries do not have public jails or prison cages and thereafter gave an order that gaols be constructed at the Assize in Clarendon. Responding to the King's directives, private gaols were built by prominent and influential citizens whose interest was to protect their political aspiration and personal desires. Prominent citizens such as Bryan Fitzcourt built a well-designed facility in 1128 named Cloere Brien to house William Martel. Other private prisons built after the King's instruction included the Castle of Spielberg, the Concierge and Bastille in Paris, the pozzì or well of the Ducal Palace in Venice and the seven towers of Constantinople (Fox V, 1983:11-12). In 1128, a prisoner Ranulf Flambard died in the Tower of London. This tower was originally built in 1066 by William the Conqueror, as a fortress for the defense of London.

According to the orders of King Henry II, the gaols were to be built within the royal castle or within or within homes which were walled. It was also required of the kings to supply the materials such as timber that would be used for the construction of the gaols. The primary purpose of the gaols was to serve as storage areas for the prisoners. Cornelius (2001: 48) submitted that 'gaols were established and locally managed by the English 'shire- reeves' now sheriffs) and were meant to be holding facilities to confine and detain persons accused of breaking the law'. This was also confirmed by Bracton who submitted that prisons at that time were to confine and not to punish (Ives, 1970:10).

In the thirteenth century, Bishop Britton lent credence to the assertion of Bracton but he spoke against the unnecessary, inhuman and debasing treatment of prisoners. He was of the opinion that only prisoners who were charged with a felony were to be restrained in irons and that none of them were to be mistreated except in accordance with their sentence (Ives, 1970:10). Prisoners who were detained in gaols were expected to wait for the next assize (criminal court). The time for such court sitting is not certain nor determined. In some cases, it may take several months or even years before the appointed judge would sit to hear their cases. At this time judges were greatly feared; the prisoners were full of anxiety. If a prisoner could not secure bail the possibility of the prisoner(s) dying of anxiety or disease before being tried was very high.

One should point out that the issue of keeping offenders in prison for a long time without trial is still very common in some African countries. For example, in Nigeria over 80% of offenders

in prison are awaiting trial (Center for Crisis communication, 2016) and some of them have been awaiting trial for a long period. Likewise, in South Africa, according to the Correctional Services Minister Sibusiso Ndebele, there are 45,043 people awaiting trial representing 29.3% of the total prison population in South Africa as at 2015. Some of these inmates have been on remand for years. This is unacceptable as it is an abuse of the human rights of such offenders. The issue of offenders' having to spend a long time awaiting trial is also one of the factors causing overcrowding in some prisons.

Regarding expenses, prisoners bore their expenses while in prison, Bishop Britton was of the opinion that prisoners were to be kept in prison at their expense and that the gaoler should charge them not more than four pence. The gaolers were not to take anything from the prisoners as they were poor and most likely would not have any valuable possession. No prisoner was to be locked up for not having money to pay prison fees (Ives, 1970: 10-11).

At our present times, it is the taxpayers that are responsible for the upkeep of prisoners. However, there is a continued debate on whether it is appropriate for the government to be using taxpayers' money to keep prisoners. One of the arguments is that offenders have committed a crime against the society why use the taxpayer to maintain them?

According to Cornelius (2001: 49) at that time there were more than 200 functional gaols all over England. The Sheriffs were identified as the keeper and legal owners of the gaols; they were allowed to appoint a keeper who was not paid a salary. The prison had a fee-paying system; prisoners were kept in prison at their own expense. They were expected to pay for bedding and mattresses and also housing. It is the choice of the prisoner to either be sleeping in a filthy environment or in a private room. This system encouraged corruption as keepers were allowed to sell goods to prisoners and to use them for cheap labor.

Some prisoners were given the privilege to work and would be charged huge fees as in the case of John Buryan *'he was allowed to work for his family for a large part of the time intolerable surroundings but while he was in the Gate House prison he was charged huge fees'* (Ives, 1970:18). However, the privilege of keepers profiteering from using prisoners as cheap labor changed as the years went by. With the enactment of Prison Acts 1865, this practice stopped. According to Prison Acts 1865 Schedule 1 (64) 1865

'No officer of a prison shall sell or let to any person in trust for or employed by him sell or let to or derive any benefits from selling or letting of any article to any prisoner'

The philosophy of imprisonment at this time was more of punishment and exploitation. The prisons and its management were not designed to reform or rehabilitate offenders.

3.6.8. The Work Houses

At the end of the feudal system in the fifteenth century, there were changes in the living conditions of the people. In fact, the period brought about drastic changes in Europe. These changes had a significant effect on the rate of crime and punishment. Feudal lords disbanded their battalion of soldiers; most of these soldiers had never known any other life started drifting about. The era was also characterised by increased population and people were migrating in droves to newly developed cities of France and London. There was also a high rate of unemployment as well as an economic meltdown. There were a whole lot of highwaymen, paupers, beggars, and vagabonds who were not employed.

To address the situation, a workhouse was established in London in 1557 with the objective to deal with wrongdoers by using them as cheap labor based on the Judeo- Christian belief that work benefits the soul and the society (Cornelius 2001:48). Workhouses institution in which the poor were housed fed and set to work had big-time become the most common form of relief to Londoners (Green, 2010). Workhouses were created as a solution to the crisis of employment and economic dislocation.

The Bridewell Hospital and prison were established in 1553 with two major purposes; the punishment of the disorderly poor and housing of homeless children in the city of London. It was located on the banks of the Fleet River in the city. It was both the first house of corrections and a charitable institution. In another parlance, Barness &Teeters (195:330) postulated that the underlying principle of establishing the Bridewell was '*that those sent there would be deterred from leading a life of wantonness and idleness by being forced to work at hard and disagreeable tasks*'.

By 1756, every country in England was instructed by the English Parliament to establish a house of corrections. As at 1759, twenty – five occupations were practiced in Bridewell. These included bakery, the spinning room, the nail house, made of silk, pins, and tennis balls. The discipline at home was harsh and work was hard.

From the 1770s Bridewell became a subject of criticism from the city of London and prison reformers. Prison reformers were concerned that the prison life corrupted rather than reformed the prisoners and the apprentices who mixed with them. After a while, prison life was

dramatically changed as Bridewell fell under the influence of the prison reform movement. A combination of improved conditions with stricter regimes made life different if not necessarily better for its inhabitants. Solitary confinement was introduced in 1792; the whipping of female prisoners was abolished. That same year, the prison sub – the committee was established to carry out weekly inspections. In 1797, following the construction of a new wing, a new system of segregation and classification of inmates were introduced; and well-behaved women were invited to stay after their discharge from the prison while waiting until they found a place in service.

Bridewell was initially an open prison where different categories of offenders could intermingle and a visitor could bring in money, food, gin and other gifts. Bridewell was more advanced than any other eighteenth-century prison in providing medical care. It had a surgeon, physician and infirmaries and prisoners were regularly inspected for diseases. The introduction of bathtubs, straw bedding and regular clothes washing helped prevent the spread of diseases. Such was the level of treatment and facilities available that it is possible that the poorly used commitment to Bridewell as a means of accessing medical care.

John Howard, the prison reformer visited Bridewell in 1789, during the visit he praised the prison for its facilities.

‘Each sex has a workroom. They lie in boxes, with a little straw on the floor.... There were many excellent regulations in this establishment. The prison had a liberal allowance suitable employment and some proper instruction but the visitor laments that they are not more separate.....no another person in London has any straw or bedding..... There are very properly, solitary cells for Bridewell boys in which one was confined and employed in beating hemp (Howard,1789:127). While confinement in Bridewell was certainly no picnic, it is likely that the London poor viewed it more favorably than some of the other prisons in the metropolis.

3.7 Transportation as a form of punishment

Transportation or penal transportation is the sending of convicted criminals or other persons regarded as undesirable to a penal colony. It was seen as an alternative punishment to hanging. Convicted criminals were transported to the colonies to serve their prison sentence. It had the advantage of removing undesirable elements from the society. Transportation was seen as an

answer to the problem of overcrowded, filthy gaols and also a shortage of workers in the colonies.

Under the English law, transportation was a sentence imposed for felony and was typically imposed for offenses for which capital punishment is too severe. The punishment was either for life or a set of period of years. If imposed for a period of years, the offender was permitted to return home after serving out his time but had to make his way back. Many offenders thus stayed in the colony as free persons and might obtain employment as a jailer or other servant of the penal colony.

During the Medieval era, a wrongdoer who is unable to pay a fine or at least follow recommendations on such a payment would be banished, exile, or outlawed. According to Craig & Rausch (1994:95) banishment as a way of punishing and treatment of offenders was introduced. The practice of banishments was given a legal backing through the Vagrancy Act of 1857 which permitted offenders to be transported to the colonies (Seigel, 206:593).

With the increase in exploration and trade of the 18th century, coupled with a huge increase in crime, transportation of convicted criminals was seen as an answer. Transportation was also perceived as the answer to the problems of overcrowding, filthy gaols and a shortage of workers in the new colonies (Maybidds & Winfree, 2005). Aside from removing criminals from the society, it was found to be cheap.

Under the English law, transportation was a sentence imposed for felony and was typically imposed for offenses for which capital punishment is too severe. The punishment was imposed for life or for a set period of years.

However, there is no consensus on the term of return. While some said the offenders were permitted to return after serving out his time but had to make his way back, others submitted that there was no procedure for return after the sentence expired. Prisoners were sent to remote areas to prevent escape and to discourage their return. It was also reported that a few returned home as many offenders stayed in the colonies as free persons and might obtain employment as jailers or another servant of the penal colony.

In 1617, a royal order was granted to judges to offer a pardon from any punishment, that included even the death penalty, but in return, the offender had to be sent to an overseas colony to work. This made transportation popular as most convicts sentenced to three or more years of imprisonment could choose transportation as indentured servants (Mays & Winfree,

2005:34). Indentured servitude meant that offenders could work as laborers for a fixed period of time, ranging from three to seven years on a contract in return for free transportation, food, boarding and any other prerequisite (Microsoft Wikipedia Free Encyclopedia, 2016). This system provided cheap labor for colonialists and the offenders tended to be more reliable and trustworthy. However, indentured servants like all other slaves were treated harshly by their masters. They were the private property of their masters; therefore, they could be whipped or placed in chains anytime they became uncontrollable (Silverman & Vega, 1996:60).

Offenders were transported to far distance for instance France transported convicts to Devil's Island and Caledonia, England transported convicts, political prisoners and prisoners of war from Scotland and Ireland to colonies in the American prison in the 1610s until the American revolution in the 1770 and Australia (1788-1868) (Microsoft Wikipedia Free Encyclopaedia, 2016). Russia sent convicts to Siberia, Spain while Portugal sent convicts to Africa; France sent convicts to South America (Parlemon & While, 1998:36).

The American revolution of 1776 brought an end to the transportation of convicts to America. This development constrained Britain to look for alternatives another penal colony as means of finding a solution to the increasing population of convicts as at that time.

It was not an easy task as it took the British about three years before they could resume transportation to Australia (Jewkes, 2007:27). Due to the time lag, there was a huge over congestion of offenders in detention centers hence the need to take drastic decision to decongest the overcrowded space hence the convicts were sent to the Hulks.

3.8 The Hulk

The Hulk refer to imprisonment of convicts in old merchant ships and naval vessels. This became necessary due to overcrowding of convicts in British gaols. The loss of America as a dumping ground for British convicts actually led to overcrowding in British gaols as the North American colonies declared their independence in 1776 and closed their ports to British prison ships. The overcrowding situation in British jails was compounded by the increasing number of people sentenced by judges to transportation. The British authorities had to look for alternative ways of imprisoning convicts. At this point, Britain started converting old merchant ships and naval vessels into floating prisons known as the hulk. To ease the overcrowding in the gaols the authorities decided to imprison convicts in the hulks of old warships moored on the Thames.

The use of the Hulks was meant to be a temporary measure and so was authorised by Parliament in 1776 for only two years, however, the 1776 Act lasted for another 80 years as it was regularly renewed. According to Ives (1970:124), the county authorities were instructed to prepare and enlarge gaols to meet new conditions and that new Acts passed from the year 1776, authorising that prisoners, failing the possibility of their being transported should be kept in Hulks. The Hulk Acts of 1776 stipulated precisely that offenders were to work at hard labor. Many prisoners served their entire sentence on the hulks. Others were housed there until space could be found on a transport ship to Australia. In 1798, it was reported that more than 1400 out of a total of almost 1900 waiting for transport to Australia were confined on the hulks.

The condition on board the hulks left much to be desired, it was terrible and horrific. The hygienic standard was very poor, this led to the fast spread of diseases, the sick were not separated from the healthy, and the sick were given little or no medical attention. The living quarters were not meant for human habitation as it was poorly ventilated. The hulks were cramped and convicts slept in fetters. Between 1776 and 1795, mortality rates of 30% were recorded with nearly 2 000 out of almost 6 000 convicts serving their sentence on boards the Hulk died. The convicts were poorly dressed, the quality of the food was equally poor, characterised by monotonous meals made up of ox-cheese, peas and, bread or biscuits.

These inhumane conditions that were occasioned by outrageous overcrowding, very despicable treatment, cruel and harsh discipline propelled the convicts to describe the hulks as ‘hell on earth’. The use of the hulks as a form of imprisonment resulted in fatalities. The discovery of Australia as a new penal colony brought an end to the use of hulks as a form of imprisonment.

3.9 Transported convicts to Australia

Transporting convicts to Australia began in 1787. This became necessary because of the decline in the transportation of convicts to American colonies due to the movement towards American independence in the 1770s, hence another site was needed to address the overcrowding situation in the British prisons and the hulks.

In 1770, James Cook charted and claimed possession of the east coast of Australia for Britain. Due to the fact that the continent is isolated, it was considered ideal for a penal colony. On 13 May 1787, the first fleet of eleven convict ships set for the sail to Botany Bay. This first fleet was under the command of Captain Arthur Phillip of the Royal Navy who was described as a brave and loyal officer. Barnes & Teeters (1959:298) gave a comprehensive details of the

team that made the first fleet to Australia thus there were 'eleven vessels, two of the ships of war, with 16 officials, 197 marines, 45 wives and children of officers and men, 553 males and 190 females criminals and several of the children of female convicts'. The fleet arrived at Botany Bay on 20 January 1788 and the place was named Sydney. The place was named after Home Secretary (Ives, 1970).

After the fleet of ships birthed, it was discovered that the location was not ideal or suitable for the establishment of a colony due to the openness of this bay and the dampness of the soil by which people would rather be rendered unhealthy. A high mortality rate was experienced because there was a shortage of food. The ships carried only enough food to provide for the settlers until they could establish agriculture in the region. Unfortunately, there were insufficiently skilled farmers and domesticated livestock to address the issue and they waited for the second fleet. It was so obvious that the first trip to Australia was not well planned.

The second fleet was an unprecedented disaster that provides little or no assistance in the way of help and upon its delivery in June 1790 of still more sick and dying convicts which actually worsened the situation in Port Jackson. The convicts were not treated fairly. They were given excessive punishment. The excessive punishment drew the attention of Lieutenant –General Richard Bourke, the ninth Governor of the colony of the New South Wales. He passed 'The Magistrate Acts' which limited the sentence a magistrate could pass to fifty lashes (previously there was no such limit). This move was resisted by employers and magistrate who petitioned the Crown against the interference with their legal rights, fearing that a reduction in punishment would cease to provide deterrence to the convicts.

Bourke was however not dissuaded from his reforms and continued to combat the inhuman treatment had been meted on the convicts, including limiting the number of convicts each employer was allowed to have, the limit an employer could have was 70 as well as granting rights such as allowing the acquisition of properties and services on juries to freed convicts. It has been argued that the suspension of convict transportation to New South Wales in 1840 could be attributed to the actions of Bourke and other men like Australian born William Charles Wentworth. It took another ten years but transportation to the colony of New South Wales was officially abolished on 1 October 1856.

If convicts were well behaved, the convicts could be given a ticket to leave, granting some freedom. At the end of convicts' sentence, in most cases seven years, the convict was issued with a certificate of freedom. He was free to become a settler or return to England. Whereas

convicts who misbehaved were often sent to a place of secondary punishment like Port Arthur, Tasmania or Norfolk Island where they would suffer additional punishment and solitary confinement.

Between 1788 and 1868, approximately 162 000 convicts were transported to the various penal colonies by the British government. Other penal colonies were later established in Van Diemen's Land (Tasmania) Queensland and Western Australia.

3.10 Alexander Maconochie (February 11, 1787-October 25, 1860)

Alexander Maconochie was born in Edinburg, Scotland on February 11, 1787. He joined the Royal Navy in 1803, and as a shipman saw active in Napoleon's war rising to the rank of Lieutenant. In 1811, he was serving on the Brig HMS Grasshopper which was captured on the Christmas eve off the coast of the Dutch Coast. He was taken as a prisoner of war at Verdum and was released upon Napoleon's abdication in 1814.

In 1836, as a private secretary to his friend, Lieutenant Governor Sir John Franklin Alexander left England for the convict settlement at Hobart in Van Diemen's Land. Maconochie wrote a Report on the State of Prison Discipline in Van Diemen's Land ... (London, 1838), at the request of the English Society for the Improvement of Prison Discipline, and with the approval of the British authorities. The report was sent by Franklin (who was aware that it was condemnatory of the system) to the Colonial Office, which transmitted it to the Home Office (Barry, 1967). With accompanying documents, the report was published as a parliamentary paper and used by the Molesworth committee on transportation (1837-38). In the report, he described the convict system as being fixated on punishment alone, with the offenders been released back into the society, crushed, resentful and bitter experiences in which the spark of enterprise and hope was dead. The report drew a lot of criticism that led to a storm in Hobart that left Franklin little alternative but to dismiss him. Maconochie's report can be said to mark the peak and incipient of the decline of transportation to Australia (Hughes, 1988).

According to Barry (1967), Maconochie was a deeply religious man, of generous and compassionate temperament and convinced of the dignity of man. His two basic principles of penology were that:

- As cruelty debases both the victims and society, punishment should not be vindictive but should aim at the reform of the convict to observe social constraints.

- A convict's imprisonment should be a task and not time sentences with release depending on the performance of a measurable amount of labour (Barry, 1967).

Following the Molesworth committee report, transportation to the New Wales was abolished in 1840, although it continued in other colonies. Disturbed by the reports of the condition of Norfolk Island, Secretary of State for colonies suggested that the new system should be used, and the superintendent gave order to officers to be deeply concerned with the moral welfare of convicts. At the suggestion of the Moleworth's committee, Maconochie was appointed a superintendent of the penal system at Norfolk Island and took up his duties in March 1804. He was recalled by the Colonial office, he left the Island in 1844. During his stay at Norfolk, he formulated and applied most of the principles on which modern penology is based.

Maconochie's notion of 'penal science' rested on the beliefs that cruelty debases both victim and society inflicting it and the punishment for crime should not be vindictive but designed to strengthen a prisoner's desire and capacity to observe social constraints. According to him, criminal punishment of imprisonment should consist of task and not time sentence; instead of being sentenced to fixed periods of imprisonment, an offender should be sentenced to be imprisoned until he had performed an ascertainable period of labor which should be measured by the number of 'marks of commendation' he earned, the marks of being devised to encourage habits of industry and vulgarity. A sentence should be served in progressive stages, one of which involved members of a working party where each was held responsible for the conduct of others. Cruel punishment and degrading condition should not be imposed and convicts should not be deprived of self- respect.

Contrary to what is often asserted, the period of his administration was peaceful, on an unexpected visit to the Island in March 1843 Governor George Gripps found '*good order everywhere to prevail*' (Historical Review of Australia, series 1 vol,2 :612).

Maconochie was appointed in 1847 to carry out his own proposal for using convict to construct a harbour at Weymouth. Maconochie expounded his theories in many pamphlets and in 1846 he published a book 'Crime and Punishment, The Mark System, Framed to Mix Persuasion with Punishment' and Make Their Effect Improving, Yet Their Operation Severe' which has exercised an immense influence on the development of penology (Bary,1967)

Maconochie's achievements included eliminating the brutal punishments such a shipping and confinement in irons; he built two churches, established schools, obtained books for Jewish

convicts and encouraged reading. He allowed convicts to use forks and knives for eating instead of using their hands. Most importantly, he spoke to inmates openly and treated them with dignity. He managed the institution by walking around. Maconochie developed what is known as today in most countries, including South Africa as the parole system. This concept became popular amongst several reformers. The concept of parole was adopted by Ireland and later by the American system. His concept and many of his practical measures form the basis of the Western penal system and they were largely adopted in the Declaration of principles of Cincinnati, United States of America in 1870 embodying the fundamental of modern penology. His approach to treating convicts could have stemmed from personal experience as a prisoner (Barry, 1967).

3.11 Early Reformers

3.11.1 John Howard (1726-1790)

John Howard (1726-1790) was one of the foremost notable early prison reformers. He visited several hundreds of prisons across England and Europe in his capacity as High Sheriff of Bedfordshire. He is often referred to as the "father of penitentiary". Howard was the one that suggested the penitentiary system (penal system) and the use of the term penitentiary to describe an institution designed to restrain convicted felons for a long period.

He published an essay '*The State of the Prisons in 1777*'. This publication he dedicated to the House of Commons for their endless encouragement in his designs and for the honor that they awarded him. His essay led to reforms in the European and American prison institutions (Cornelius, 2001:52). In the course of visiting prisons in England and Europe, Howard was greatly appalled to discover that prisoners who had been acquitted were still confined because they could not pay the gaoler's fee. He equally found out that the prison conditions were in a terrible state with varying kinds of torture and abuse.

His writing was in three sections, the first two sections dealt with the general view of the deplorable situations and bad practices in prisons. The third section had suggestions or proposals on how to bring about improvement in the prison structure and management. His suggestions include:

- That prisons be built near rivers or brooks with plenty of fresh air and with many rooms that each criminal might sleep alone.

- Male offenders should be separated from women, those young offenders should be separated from the more hardened offenders and that debtors should be separated from felons.
- Each person should have a bath, an infirmary, and an oven for purification of clothes
- A workshop be provided for the debtors so that if they wished, they could employ themselves for the support of their families
- Concerning personnel. the first care must be to find a good jailer, one that is honest, active and humane
- Jailers should have adequate salaries and that they should not be permitted to sell liquor
- All fees by jailers and their workers should also be abolished
- A Chaplain and A Surgeons should be selected for each jail
- Both spiritual and physical healing should be made available for the prisoners.
- Every room of the jail should be scraped and lime washed twice every year and the inhabitants should sweep and wash all rooms daily (Craig & Rausch, 1994:93-94).

3.11.2 Cesare Beccaria

Cesare Marchese (Marquess) Di Beccaria Bonesana was born on March 15, 1738, in Milan and died November 28, 1794. He was an Italian criminologist, jurist, and an economist. He was the eldest son of the aristocratic family and was educated at Jesuit school in Parma (Allen,2017). In 1758, he received a degree in law from the University of Pavia.

Beccaria became close friends with Pietro and Alessandro Verri, two brothers who formed an intellectual circle called 'the academy of fist' which focused on reforming the criminal justice system. He published a book *Dei Delitti e delle Pene* (Crime and Punishment) at age 26 in 1764. The book was translated into French and English and he became a celebrity.

Allen (2017) described Beccaria's treatise as the first succinct and systematic statement of principles governing criminal punishment. The major thrust of the book is founded on the utilitarian principle, that government policy should see the greater good for the greater number

One of the major works of Beccaria is his recommended essential principle and he brought to bear the 'classical school of criminology'. These were highlighted thus by Cornelius (2001:51)

- Sentencing must be quick and definite: and to some extent taken into consideration personality as well as characteristics
- Sentencing can only be awarded through following the law, and can only be offered in accordance with the law. Once a person has been awarded a sentence no one will have authority to change that sentence. The sentence should be protective of the society.
- The gravity of the sentence should be equated to the harm done to the social order. Punishment awarded to a rich man should be exactly the same as a poor man.
- All persons on trial should be regarded as innocent until they are confirmed guilty. They must be permitted to exhibit evidence and be handled in a civilised manner during the trial.
- Laws must determine what acceptable behavior is and what behavior is punishable by law. It is of critical importance that crime must be avoided instead of initiating a punishment on an offender. The way the punishment should be carried out should have an effect on the society.
- Criminal process should not be composed of concealed allegations and distress; trials instead should run as quickly as possible
- When it comes to punishment against property, sentencing should only be through payment of fines. If the offender is unable to pay the fine, then imprisonment is adequate. As to crime against the state, banishment is suitable.
- Capital punishment should not be awarded as punishment because it is irreversible; a life sentence is preferred deterrent when compared to a death sentence.
- Imprisonment as a way of punishment should be encouraged. The manner of imprisoning of offenders should be enshrined and a provision of better accommodation should be made so that there is a consideration of the separation and classification of inmates according to age, sex and the gravity of the crimes committed.

He criticised the barbaric practices of his days, these include torture and secret proceedings, the caprice and corruption of the magistrates, brutal and degrading punishments. According to him, the objective of the penal system should be to achieve the proper purpose of security and order, anything in excess is tyranny. He went further to submit that the effectiveness of the criminal justice system depends largely on the certainty of punishment rather than on its severity. (Allen,2017)

Beccaria developed his position by appealing to two philosophical theories: social contract and utility. Concerning the social contract, Beccaria argued that punishment is justified only to defend social contract and to ensure that everyone will be motivated to abide by it. Regarding utility, he argued that the method of punishment selected should be that which serves the greatest public good (Internet Encyclopedia of Philosophy, n.d)).His theory is used in criminal justice system in almost all countries of the world including African countries

3.11.3 Jeremy Bentham

Jeremy Bentham lived between 15 February 1748- 6 June 1832.He was born in Hounds ditch, London to a wealthy family that supported the Tory Party (University College, 2007). He was an English philosopher, jurist, and social reformer. He was educated at Oxford, trained as a lawyer and was admitted to the bar in 1769 but he never practiced (The Columbia Electronic Encyclopedia, 2012).

Jeremy devoted himself to the scientific analysis of morals and legislation. He is regarded as the founder of utilitarianism. He appreciated the work of Cesare and perceived him as the principal or major source of penal theory. He was also a regular attendee of the lectures of Sir William Blackstone who at that time his commentaries on the laws of England was popular and highly regarded. However, Bentham found Blackstone's teachings and interpretation rather confusing. He first drew attention through his criticism of Blackstone's teachings (Mautner,n.d) He became deeply frustrated with the complexity of the English legal code which he termed 'Demon of Chicane'(Wikipedia,2016). He called for the abolition of slavery, death penalty, physical punishment including that of the children (Hugo Adams,1983)

Bentham's ambition was to create a 'Pannomion', a complete utilitarian code of law. Not only did he propose many legal and social reforms, he also expounded an underlying principle on which they should be based. The philosophy of utilitarianism taken for its 'fundamental axiom', it is the greatest happiness of the greatest number that is the measure of right or wrong (Burns,2005). The 'greatest happiness principle' or the 'principle of utility' forms the cornerstone of all Bentham's thought. By 'happiness' he understood a predominance of 'pleasure' over 'pain'. He wrote in The Principle of morals and legislation:

'nature has placed mankind under the governance of the sovereign masters, pain, and pleasure. It is for them to point out what we ought to do, as well as to determine what shall we do. On

the other hand, the standard of right and wrong, on the chain of causes and effects are fastened to their throne. They govern us all we do, for all we say, in all we think..... (Chapter 1)'

One of his many proposals for legal and social reform was a design for a prison building which he called the Panopticon. The Panopticon is a type of institutional building designed by Bentham in late 18th Century. The concept of the design is to allow all pans (inmates) of an institution to be observed (-option) by a single watchman without inmates being able to tell whether they are being watched. The design consists of a circular structure with an 'inspection house" at its center, from where the manager or staff of the institution is able to watch the inmates, who are stationed around the perimeter.

Bentham described the Panopticon as a new mode of obtaining the power of mind over mind in a quantity hitherto without an example (Bentham,1843d). Elsewhere, in a letter, he described the Panopticon prison as "*a mill for grinding rogues honest*"(Bentham,1843). He was developing the model for a period of sixteen years refining his ideas for the building, and hoped that the government would adopt the plan for a National Penitentiary, and appoint him as contractor general. According to him, the Panopticon was intended to be cheaper than the prison of his time as it required fewer staff.

He made a request to a committee for the reform of criminal law thus '*allow me to construct a prison of this model, I will be the gaoler. You will see that the gaoler will have no salary-will cost nothing to the nation*'. *As the watchman cannot be seen, they need be on duty at all times, effectively leaving the watching to the watched*' (Bentham, 1995).

With reference to Bentham's proposal, prisoners would also be expected to be engaged in manual labour, working on wheels to spin looms or run a water wheel. His line of reasoning was that this would decrease the cost of running the prison and give possible income.

In spite of all the efforts of Bentham, no single Panopticon was built. He believed that all his plans were aborted by the king and autocratic elites acting in their own personal interests. Although the prisons were never built, his concept had an important influence on later generation thinkers. According to a 20th-century Philosopher, Michael Foucault, the Panopticon was paradigmatic of several 19th century 'disciplinary institutions' (Focault,1977).

Bentham devoted himself to reform of the English legislation and law; he demanded prison reforms, the codification of the laws and extension of the political franchise. In a bid to find ways of resolving the prison condition and the need to rehabilitate prisoners, a group of well

known and powerful Philadelphians converged in the home of Benjamin Franklin. The members of the Philadelphia Society for Alleviating the Miseries of Public Prisons expressed growing concern with the conditions in America and European prisons. Dr. Benjamin Rush spoke on the society's goal to see the Commonwealth of Pennsylvania set the international standard in prison design. He proposed a radical idea to build a true penitentiary, a prison designed to create genuine regret and penitence in the criminal's heart. Hence, the concept of solitary confinement

In the United States, the idea was first implemented at the Eastern State Penitentiary in Philadelphia in 1829. The system was called the Pennsylvania system or the separate system. The underlying principle of this system is that solitary confinement foster penitence and encourages reformation (The Editors of Encyclopaedia Britannica, 2016). The system was intended to keep convicts separate even as they worked in order to prevent any contamination or distraction that may impede their repentance hence the term penitentiary.

The prison structure located on Cherry Hill which opened on October 25, 1829, was designed by John Haviland and was considered to be the world's first penitentiary. It contained innovation such as running water, flush toilets in all cells. Prisoners were kept in solitary confinements in cells 16 feet high, nearly 12 feet long and 7.5 feet wide. An exercise yard completely enclosed to prevent contact with any prisoner was attached to each cell. Prisoners saw no one except institution officers and occasional visitors.

According to Clear, Cole & Reisig (2006), the operation of this prison was based on five general principles namely:

- Do not treat prisoners harshly but instruct them that hard and selective forms of suffering could change the lives
- Solitary confinement would prevent further corruption
- Offenders should reflect on their transgression and repent
- Solitary confinement is considered punishment
- Solitary confinement is economical

Cilliers (2000:5) highlighted the advantages of Pennsylvania system thus

- Facilitated control of prisoners

- The individual needs of prisoners were met
- Offenders were given the opportunity of remorse or repentance about their transgression
- Prisoners could not exercise a negative influence on each other
- Each prisoner's identity was kept a secret

Francis Leiber hailed the system as monuments of a charitable disposition of the honest members of society toward their fallen and unfortunate brethren.

Despite the advantages, there were certain flaws associated with the Pennsylvania system. For instance, the English novelist Charles Dickens after touring the institution in 1842 concluded in his American Notes (1842) that the Pennsylvania plan was '*cruel and wrong*' say he found '*this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body*'. The system was also viewed as a failure in that it did not accomplish its goal'. Cilliers (2000:6) asserts that '*no one could function under such abnormal circumstances*' because of the total silence and total isolation, prisoners became mentally deranged. The system was also seen as been expensive, with an increase in the number of prisoners, the prison became overcrowded and this made the Pennsylvania system lost its meaning of complete solitude. Prisoners began to share cells with one another and no doubt started to communicate with one another.

The philosophy of Pennsylvania emphasised rehabilitation and deterrence of prisoners. The Pennsylvania system spread until it predominated in European prisons. The system was superseded by the Auburn system.

3. 11. 4 Auburn System

The Auburn system which is also known as the New York system was designed to replace the Pennsylvania system. The establishment of a second New York State prison at Auburn soon led to a new prison model and regime. It was designed to keep convicts separate and unable to communicate with each other even as they were forced to labour as penal slaves.

Industry, obedience, and silence were the guiding principles of the new system. The system promised to rehabilitate criminals by teaching them personal discipline and respect for work, property and other people. The prison was designed with small cells specifically for sleeping for and not works. The Auburn prison was controlled by a broad of five inspectors.

In 1816, the Auburn prison was built with an opinion that it will alleviate the overcrowding at Newgate (Siegel, 2006:594). The model was designed in form of solitary confinement but prisoners were allowed to congregate during the day while they worked and ate but slept in individual cells at night.

During the 19th century, the prisoners had no right or any opportunity to live semi-comfortably. The Auburn system established several characteristics that were unique to the disciplinary conditions. The silence was the biggest factor in the line of rules the prisoner had to follow. John D. Cray, a deputy warden at the Auburn Prison demanded that prisoners be completely silent to take away prisoners '*sense of self*'. The understanding was that when the '*sense of self*' was taken away, many convicts became compliant and obedient to the warden's wishes.

Another major feature of the Auburn system was the transporting mode of the convicts within the prison complex. Movement within the prison was done in a regimented way, with each one placed one hand on the shoulder of the person in front and had to look at the guards or other inmates. This was referred to as 'lock step'.

For those who contravene any rule, they were given lashes and flogging. They were also punished using '*cold shower bath*' with the prisoner stripped naked, bound hand and foot with a wooden collar around his neck to prevent him from moving his head. The barrel with the inmate inside was placed directly under an outlet pipe where water, sometimes iced would be poured down.

For some, the Auburn system was considered a success. A Boston clergyman who visited Auburn in 1826 found it a shining example of what could be accomplished with proper discipline and design. He summarised it thus '*the whole establishment from the gate to the sewer is a specimen of neatness*. He wrote '*the unremitted industry, the entire subordination and subdued feelings of the convict have no parallel to equal criminals*'. The Reverend Louis Dwight and his associates from the Boston Prison Discipline Society pronounced Auburn a '*noble institution*' and said further, '*we regard it as a model worthy of world's imitation*'.

The seeming success of Auburn system led to the building of a similar prison in Sing Song in 1825. The effect of the discipline manifested when the prisoners were asked to build the Sing Song prison as none of them contemplated an escape (Siegel, 2006: 594).

The Auburn system, unlike the Pennsylvania system, was cheaper to introduce, provided greater opportunity for vocational training and it provided more revenue for the state.

3.11.5 Elan Lynds

Elan Lynds became a principal keeper while William Brittin was appointed as the first warden of Auburn prison. Upon the death of Brittin, Elan Lynds occupied the position thereby becoming the second warden of Auburn. Elan Lynds is often referred to as one of the most influential persons in the development of America discipline. He is described as a strict disciplinarian who believed that all convicts are cowards who could not be reformed until their spirit is broken. To achieve this, he devised a system of brutal punishment and degrading procedures.

One of his major attributes is humiliating prisoners. He was never in support of rehabilitation of any kind as he held the view that *'reformation could not be effected until the spirit of the criminal is broken hence the justification for prison discipline'* (Barness & Teeters, 1959:341).

He employed flogging and whipped with rawhide anytime any of the convicts misbehave. Highly volatile and dangerous convicts were placed in solitary confinement for a long time more than necessary and this culminated in some of them having mental challenges and others committed suicide (Reid, 1997: 544). It need be pointed out that some of the brutal treatment of offenders is a common practice in most prisons in Africa.

3.12 Theories of Punishment

Philosophers and theorists have long debated why is it that we punish and what principles are involved when we punish? Punishment has been a subject of debate among philosophers, political leaders, and lawyers for centuries. Various theories of punishment have been developed, each of which attempts to justify the practice in some form and to state its proper objectives (Clarke, Edge, Bernard, Thomas & Alcott, 2016). Burchell & Milton (1991:42) posit that punishment can be justified on the basis that it is deserved (absolute theory) or that it has social benefits. Snyman (1989: 17) in justifying why we punish stated that theories of punishment have three components. First is the absolute theory which is also regarded by other philosophers as 'deontological' – inflicting pain for its own sake, that is retribution; secondly the relative theory which is also referred to as 'teleological' or utilitarian – inflicting punishment to achieve some benefit that is deterrence, incapacitation and rehabilitation; and thirdly, what is known as the unitary theory - which is known to combine all different theories in one, when a punishment is inflicted.

There is only one absolute theory which is called compensation. According to this theory, punishment is a goal in itself. The main features of the theory are that it is retroactive in nature and has its focus on the crime committed. The main reason why offenders are punished is that they have committed a crime and the aim of the one inflicting punishment is basically to make the offender pay or compensate (receive retribution) for the crimes they have committed. Punishment according to relative theories is a means to an additional goal. The additional goal would differ depending on the emphasis of the specific relative theories whether it is prevention, deterrence or reformation. Contrary to the position of the absolute theory that is retroactive, relative theories consider the future.

Each of these theories is elaborated hereunder:

3.12.1 Retribution

This theory of retribution is the oldest of all the theories of punishment. The theory is based on the underlying principle that crime distorts the judicial balance in the society. In the society, the disturbance is not permissible; hence the imbalance resulting from the act of committing a crime has to be re-established. At every point in time, the two sides of the scale of justice must be brought back into a state of equilibrium. The concept of retribution should not be mixed up with revenge. This clarity was highlighted by Burchell & Milton (1991:42) as they indicated that the thrust of retribution hinges on the principle of equivalence. Therefore, punishment is inflicted in relation to the crime committed; this principle does not apply in the case of revenge where the focus is only on the crime. In addition, in the case of retribution, the punishment is administered by a constituted authority empowered to do so while in the case of revenge, the offended or aggrieved is responsible for administering the punishment.

The theory of retribution is based on some principles namely expiation (penance), punishment as a just reward, and appeasing or satisfying the society.

Expiation: This principle derives its origin from the influence of the church. It is the view of theologians that punishment has the capacity to restore the offender's moral disposition and those offenders are expected to pay their debt through retribution.

Punishment as a just reward: Punishment is seen as morally binding to sustain the moral balance of the society. It is imperative for offenders to be punished and punishment is therefore justified. However, the key condition is that the offender's guilt must be established. According to Ezorsky (1972:7), 'the first principle of retribution is that it is necessary that a man be guilty

if he is to be punished'. As soon as the offender is found guilty without any iota of doubt, then punishment can be inflicted relative to the extent of legal violation or damage. The assumption is that the less the damage, the lighter the punishment to be imposed.

Satisfying (appeasing) society: When a crime is committed the society is 'injured'. To atone or appease the society punishment must be administered to the perpetrator of the crime. Burchell & Milton states that, in sentencing, it is appropriate to factor in the indignation suffered by a community over the commission of the crime. If offenders are not recompensed by punishment in a practical way, it could result in a situation whereby the one that suffered injury as a result of a crime committed take laws into their hands. This could result in anarchy. Therefore, to prevent anarchy, punishment must be administered.

There have been some criticisms of the retribution theory. The criticism includes that it is a reflection of primitive revenge. Secondly, the theory has been faulted on the premise that it is difficult if not impossible to establish punishment that is equivalent to the crime. The question is how do we determine the appropriateness of punishment? For example, the case of a victim who became permanently disabled after being shot in the eye by a robber. What could be the equal suffering if the offender is sentenced to a term of imprisonment?

Despite the various criticisms of the retribution theory, it remains the only theory that establishes a direct link between the crime committed and the idea of justice (fairness).

3.12.2 Deterrence

Another justification of punishment is deterrence and Bentham is often regarded as the key figure and intellectual representative of deterrence, though Beccaria argued from the same utilitarian standpoint is perceived as the humanitarian representative.

The purpose of deterrence is to restrain (restrict or keep) sentenced offenders from committing further crime and secondly to prevent others from committing a crime (Eyesenck, 1977: 161). Taking a cue from Eyesenck's submission deterrence could be directed at an individual who has committed a crime already and also to the generality of the people. The deterrence theory has some basic principles that are highlighted below:

- **People will think before they act:** The assumption here is that a normal, reasonable person will think before they act. As human beings, we have the capacity to make choices. We will, therefore, consider the advantages the crime might hold and weigh

them up against the disadvantages of the punishment that will be imposed. If the advantages outweigh the disadvantages any potential offender might decide to commit the crime. In situations where crime is highly organised that offenders have a conviction that they may never be arrested and the certainty of proper punishment being administered is not guaranteed, deterrence may not be effective. Despite the fact that human beings are rational beings that think before they act, there are however situations that may not give room for thinking about the punishment that may result from his or her actions.

- **Punishment obviously will follow an offense:** The deterrence value of punishment is in direct relation to the certainty that punishment will be administered. The rationale is that potential offenders to know that if they committed a specific crime, they would receive a definite punishment. Deterrence theorists rely on three individual components of severity, certainty, and celerity. The more severe a punishment is thought, the more likely that is rationally calculating human being will desist from criminal acts. To prevent crime, therefore, criminal laws must emphasize penalties to encourage citizens to obey the law. Deterrence theorists believe that if punishment is severe, certain and swift, a rational person will measure the gains and losses before engaging in crime and will be deterred from violating the law if the loss is greater than gain. Classical philosophical thought that certainty is more effective in preventing crimes than the severity of punishment. A certainty of punishment simply means that making sure that punishment takes place whenever a crime is committed.
- **Punishment always instils fear:** Punishment does not always arouse fear. Punishment could also cause anger, which could lead to retaliation and further crime. In the case of a political prisoner, if he or she were to be punished for action which is regarded as an offense but which he believes his or her own conviction, the effect of punishment could be inspirational rather than terrifying.

Deterrence could either be individual and general.

Individual deterrence

Individual deterrence lay emphasis on an individual offender and submits that the punishment imposed on him should discourage him from committing further crimes. The objective of punishment is to '*teach offenders a lesson*' so that they would not transgress again. This lesson that has to be learned, this is also often the explanation for a suspended sentence. For instance,

an individual who receives a suspended sentence goes about with the threat of the sentence hanging over his or head like a sword. If the person observes the legal prescriptions, the sentence does not come into effect, if not, the sentence is imposed. Such punishment undoubtedly has a deterrent value.

General deterrence

The general deterrence theory is considered as the most important theories of punishment. This theory is based on the principle that society is deterred from committing a crime by the threat of possible punishment. Unlike in the individual deterrence, there is no actual imposition of punishment. Another premise that applies to this theory is that people as rational beings will consider the advantages and disadvantages of a proposed action before carrying out the action. However, this view can be definitely regarded as idealistic as far as some individuals and their offenses are concerned. However, there are situations that an individual may not consider the merits or demerits of the action especially when an individual is emotionally provoked. Snyman (1995:23) views this idealistic approach as an inherent weakness in the deterrence theory. Burchell & Milton (1991:47) also are of the opinion that for punishment to have deterrent value, the specific punishment for a specific crime must be known. It could be rightly deduced that the deterrent value of punishment on society is generally based on belief rather than on empirical evidence. The efficacy of deterrence theory is called to question every time there is a case of recidivism. This may make one conclude that punishment does not have the desired deterrence effect.

The theory has drawn some criticisms which include the idea that the advantages and disadvantages of punishment are considered. However, the fact cannot be controverted that some crimes such as murder and terrorist attacks are well planned and thought through. Another major criticism as expressed by Kant and others is that the individual is used as a means to an end (Burchell & Milton 1991:148). Kant was trying to explain that an individual is punished to serve as a warning to others so they will not contravene the laws. Burchell & Milton (1991:49) defend this principle by pointing out that this is the only way a society can be protected. Cohen (in Burchell & Hunt 1991:49) supports the view saying '*We are at times inflicting pain on innocent people in order to promote the common good. The fact is that the lives of individuals are not independent atoms which can be treated in isolation*'.

3.12. 3 Rehabilitation

The origin of rehabilitation theory could be traced to Plato. According to Bean (1986:53), Plato came up with some arguments that:

- Wickedness is a mental disease disintegrating and ultimately fatal
- The punishment of wicked acts is to be regarded as moral medicine, impalatable but wholesome
- The state should stand for the criminal in loco parentis (that is as a guardian in the place of the parent)

The position of Plato was corroborated by St Anthony Thomas who submitted that punishment had a medicinal value because it not only had to heal sins of the past but also had to prevent future action (Bean 1982:54). Therefore, there must be more to achieve through punishment than just compensating for a person for an act of crime committed.

The modern day rehabilitation was developed by Fari and his idea dominated the rehabilitation debate during the mid 20th century. The core of rehabilitation is change. With reference to offenders, this implies that their disposition, attitude, and behavior have to change. They must be able to come to the realisation that their former behaviour (that is the crime that they committed) was wrong. As soon as they have come to this realisation, and also show remorse, there is a possibility that they can change; this entails a real desire to behave differently in future. Rehabilitation should not be seen as a once off thing but as a process. It is regarded as a process because as soon as the offenders experience this change of attitude and express the desire to be different, they will strive to achieve this goal. Other ideals and value systems will be pursued to improve themselves.

Rehabilitation theory is based on the following principles:

- Crime is regarded as the manifestation of a social ailment. Like all theories that are based on medical grounds, the purpose must be the treatment of the 'illness or 'ailment'. According to Plato in Bean (1982:55) *'No punishment is inflicted in law for the sake of harm, but to make the sufferer better or to make him less bad than he would have been without it'*
- Flowing from the above, human behaviour is regarded as the product of causes in individuals and in their environment. Accordingly, the cause of the crime can be traced

back to some or other personality defect(s) in the offenders, or to environmental factors such as an unhappy or broken home, or other harmful influences to which they were exposed to at some stage of development. A good example is a sexual offender who himself was sexually molested as a child and then in adulthood, repeats this behaviour with children. If we accept on the one hand, that certain categories of offenders transgress because of harmful experiences in their childhood, deficient skills to adapt successfully in an adult (mature) milieu or defective moral development, then we must also accept that change can be brought about intervention in the offender's lives. This leads to the next premise

- Offenders can be changed through the use of treatment. Snyman (1995:25) points out that the use of treatment programmes can be of value for young offenders, whereas old offenders are more set in their ways and could find it difficult to learn different behavioural patterns. However, this definitely does not mean that treatment programmes cannot be successful for adults.
- Through the use of treatment programmes, offenders must be equipped with necessary potential for law-abiding behaviour. They must, therefore, learn skills that are compatible with legal norms and social expectations

Rehabilitation theory has been criticised. One of the points of criticism of rehabilitation as a motive for punishment is that it impairs basic human values. It is postulated that it is not only a violation of individual's freedom and dignity but it is also exceptionally cruel. Furthermore, is the problem of determining the time within which rehabilitation must take place (Snyman 1995: 25). Since we are working with a person, it is not easy to ascertain when an individual has been rehabilitated. Another problem associated with rehabilitation theory is the mutual exclusivity of punishment and rehabilitation. Bernard Shaw in Moberly (1968:123) considers it absurd that punishment and rehabilitation can be combined and says '*Our relatively human twentieth-century prison system is stultified by the division of purpose*'. Lending credence to this view, Robin & Anson (1990:349) maintain that no matter what therapeutic ideals are pursued in prison, the offender experiences them as punishment. From the inside of a prison cell, prison and punishment are synonymous. From a scientific point of view, the opposite of punishment is a reward, not rehabilitation-and the only reward associated with imprisonment is getting out.

Despite the criticisms of the rehabilitation theory, there are areas that can be positively evaluated

- Rehabilitation gives a clue of how criminal's circumstances can be improved
- Focusing on the offender's personality and social circumstances does give expression to the ideal of the individualisation of punishment

According to Bartollas (1985:38), there are offenders who benefit from reform. In his opinion, an environment that is '*offender friendly*', together with dedicated staff, can make a difference.

3.12.5 Prevention

The prevention theory entails punishing the offender with the objective of preventing crime. This theory can overlap with both the deterrence theory and the rehabilitation theory because both theories can be regarded as means to prevent crime. This theory should never be enforced completely independently of other theories. Its application should rather be mitigated with the more moderate working of the compensation theory. Before the application of these theories, the possibility that the offender will break the law again must be feasible. Nevertheless, it is difficult to establish if an individual will run afoul of the law again or not. The prevention theories include incapacitation, individual deterrence, and rehabilitation.

3.12.5.1 Incapacitation:

Incapacitation is an attempt to prevent offenders from committing further crime and thereby protecting the society. Proponents of incapacitation theory advocate that offenders should be prevented from committing further crimes either by temporary or permanent removal from the society. Incapacitation is a reductivist (forward-looking) justification for punishment. There are several forms of incapacitation such as death penalty, banishment, castration, and imprisonment but imprisonment remains one of the most commonly used methods. Removing someone from the society either for a short or long period reduces the chances of such an individual being a threat to the society.

The focus of rendering harmless is of the present as offenders are hence prevented from committing further crime due to the fact that their freedom has been curtailed. According to Snarr & Wolford (1985:15), the denial of the opportunity to engage in criminal activity is the key rationale behind incapacitation. This theory is premised on the fact that once an offender commits a particular crime he will commit the offense again unless he or she is kept away from doing so. The major criticism of this theory is that it is difficult to scientifically prove this assumption. While this assumption may be correct regarding some offenses such as

kleptomaniacs it may not be correct for an offense such as premeditated murder. Another issue is how long it will be sufficient to detain a person in a bid to render him or her harmless?

Deterrence and rehabilitation can also fit into the prevention theory

3.12.5.2 Individual deterrence

Individual deterrence, like other theories on individual prevention, is principally concerned with offenders who have committed a crime. The underlying principle is that the '*pain*' that is associated with punishment will condition the person not to commit a crime again. This was explained by Rabie (1979:11) that '*the offender is through punishment is to be taught a lesson so that he will be deterred from criminal behaviour*'.

One of the criticism against individual deterrence as a method of crime prevention is on psychological grounds. The focus here is that criminals seldom consider the repercussions of their actions. This is summarised thus by Parker (1968:40), '*they (criminals) act upon impulse that they can neither account for nor control*'

In addition, the theory is criticised on the fact that it is not known how much higher the rate of recidivism figure would be without the imposition of punishment. It could only be assumed that there would be more crime if there is no provision of punishment for those who transgress against the law. Punishment has a deterrent and punitive value for law-abiding people who have been found guilty, for this category of people a more drastic sanction is therefore not necessary to prevent crime in the future (Parker,1968:46). Studies have shown that people who are exposed severe punishment are less inclined to conform to law-abiding values(Parker,1968:46). It could, therefore, be concluded that it the more hardened type of criminal on whom punishment makes little impression.

3.12.5.3 Rehabilitation

The underlying principle of this theory is that crime is prevented through rehabilitation because the personality of the offender is changed to conform to the law. Despite the fact that Parker (1968:53) suggests a personality change, it is believed that it is rather a case of a value system that is being changed. The truth of the matter is that individuals are not changed for their own sake or in order to be able to live and lead better lives, the main concern is rather a social justification namely that they would stop transgressing.

A major challenge with rehabilitation is that an offender has to be detained for a long period, which could be out of proportion to the seriousness of the crime and in the long run, there may still be no assurance of the person's rehabilitation. This was succeedingly espoused by Packer (1968:56) thus '*we can use our prison to educate illiterates, to teach men a useful trade, and to accomplish similar benevolent purposes*'. The plain disheartening fact is that we may have little reason to suppose that there is a general connection between these measures and the prevention of future criminal behaviour. It is difficult to make an argument for the restriction of person's freedom if there is no real assurance that that person will not commit a crime again.

3.12.6 General prevention

This has to do with people, in general, being restrained from committing a crime, not as a result of going through punishment individually but merely through the existence of the threat of punishment for committing a crime. The classical theory of general prevention is that of general deterrence. The idea is that man, being a rational creature would refrain from the commission of crimes if he should know that the unpleasant consequences of punishment will follow the commission of certain acts (Rabie 1979:22). If this theory is to succeed at all, the punishment for a particular crime must be known. 'It is publicity and not the punishment which deters'.

Although there is merit in this theory, the fact that individuals do not necessarily think before they act has been heavily criticised. Rabie (1979:22) mentions that human behaviour can stem from fear or greed, or can even be the result of impulses over which no control can be exercised. One of the most important perquisites for punishment to have any real value is certainty of punishment rather than the gravity of the punishment. If a sexual offender were absolutely certain that he would be castrated if he raped a woman, he would probably think twice about committing the crime. It could, therefore, be argued that law enforcement and general deterrence go hand in hand. '*Neither fear of punishment nor respect for the law is likely to hold back potential offenders effectively if this (law enforcement) is known to be inadequate*'

For us to have a balanced argument, it is instructive to posit that the gravity of the punishment could play a role for people who might reflect on the consequences of their acts. However, if there is no real possibility of that person being prosecuted, the gravity of the sanction of punishment loses its meaning.

All said and done the arguments for and against of general deterrence are really just hypothetical, we can generalise, but it is difficult to find real evidence

3.13 Chapter Summary

In this chapter, the concept of imprisonment was discussed and key elements of punishment were identified. These include the element of pain and unpleasant consequences, punishment follows the breaking of a specific law and that it (punishment) is applied to an offender. The historical development of punishment was done by tracing the history of punishment chronologically from the primitive society to Hammurabi's code biblical era, the Middle Ages, the Renaissance, transportation of prisoners as a way of punishment. In reviewing the history of punishment and development of prisons it was noted that there were different phases of development with each having a prevailing philosophy at a particular phase of development. For example, in the primitive times, the emphasis was on revenge and justice left in the hands of individuals, while in the Hammurabi code the administration of justice was in the hands of a central government and in the middle ages punishment was cruel and barbaric. In addition, the contributions of early reformers such as Jeremy Bethanan, Cesaria whose contribution shaped the direction of penal reforms were discussed. Furthermore, the philosophy of punishment as well as the various theories that have been used to explain the rationale behind punishment was enumerated. The researcher could identify some of the key features in the historical development of punishment that still exist in these contemporary times. These include inmates being detained for a long time without trial, solitary confinement, the death penalty in some countries and torture as a means of making offenders confess their guilt. These leave much to be desired. It is a clear indication that in corrections we still have a long way to go in ensuring that offenders are truly rehabilitated and not made repeat offenders.

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Chapter Four

Punishment and Imprisonment in African societies

4.1 Introduction

This chapter examined the various types of punishment in African societies before the advent of colonialism, imprisonment during the colonial era as well as the situation of things in African prisons after independence. The idea of reviewing the types of punishment and imprisonment in African societies before the advent of colonialism, during the colonial era and post-colonial era is to give the study an insight into what was operational then if any of the developments in these periods have any bearing on what the situation of punishment and imprisonment is today. In addition, it could also be a basis to discover if there has been major changes between the earlier times and the present and this could inform recommendations as to how the prison conditions could be improved upon.

4.2 Punishment in African societies before the advent of colonialism

Before the advent of colonialism in African societies which was between the 16th and 17th centuries, African societies have different methods of punishing offenders. This section would only discuss some of the general methods of punishment.

According to Read (1969:103-104), the underlying principle of the penal system in traditional African societies was to secure compensation for the victim as opposed to punishment for offenders. He submitted further that the essence of compensation was to restore the equilibrium of society which is distorted by an offender committing an offense. He points out that compensation of some common injuries was probably fixed in certain communities citing the example of Kikuyu law which stipulated that *'nine sheep or goats be paid for adultery or rape and one hundred sheep or ten cows for homicide'*. The issue of compensation, restitution, and recompense seem to be on ground since the twentieth century and according to Lectric Law Library (2017), this theory is becoming more important in criminal procedure. The theory describes the debt to the society the criminal incurs through his offense in more mercantile

sense. It is being suggested that criminal debts to the society be paid through valuable services to the community and individuals harmed. This is to allow criminals to perform compensatory services such as more intense probation jail term served on weekends and house arrests. Examples of compensatory punishment might be if someone is convicted of stealing, he might serve his jail terms at weekends but is permitted to work during the week on the condition that he will refund the money he stole to the business and pay damages. Another example is the case of a sexual offender who is placed under house arrest for a year but allowed to go to work on the condition that he will be responsible for the payment for psychiatric treatment for his victim (Lectric Law Library,2017). The viability of this type of punishment is still under investigation while it is not yet adopted in most African countries. However, it would be worth the while to explore this approach in African countries. It could assist in reducing the overcrowding nature of Africa prisons

A major punishment in the pre-colonial era in some African countries was to ostracise the offender. In the context of cohesive nature of pre-colonial Africa, ostracism was a very severe punishment. This could be in form of isolation within the community itself that is the offender is barred from going to specific places or ex-communicated but he or she still live in the society. The other option which is more severe is a form of total banishment by means of ritual. In some cases, it is referred to as being sent into exile (Read, 1969; Bernault, 2003). In the modern day banishment is a form of confinement. According to Joh (2010), modern punishment is incarceration. The underlying principle of incarceration is to confine the offender to a place over a period of time as a form of punishment, take him away from the scene of the crime (the society) and to prevent him from committing other crimes. Incarceration could also be said to serve as a deterrence for others who may want to commit a crime.

Another form of punishment prevalent prior to the advent of the colonial rule in African societies was a spiritual sanction. Several religious rites were often conducted to protect the community from the wrath of gods, goddesses, and ancestral spirits, and to make atonement for the action of the guilty parties. Religious rites denouncing the crime were also utilised as a form of punishment. According to Read, the elders of Nandi tribe of Kenya in East Africa would deal with serious crime by uttering curses which unless the curses are removed, it would prove fatal spreading also through the offender to his family and descendants (Read 1969:105).

Imprisonment was not used as a form of punishment during the pre-colonial era but rather as a form of detention for offenders awaiting trial; offenders that have been sentenced to death; and

others waiting for further punishment or debtors. For example, in Nassarawa, North Central, Nigeria, it was the practice to expose a thief kept in stocks by the house of the victim until he was redeemed by his relations, discharged or disposed of (Gun, 1960). Stocks were used as a form of shame and humiliation, and humiliation and the social status of a person exposed in stocks were likely to be reduced. This served as a form of deterrence to others from committing crime.

In Cameroon for instance, punishment in the pre-colonial era ranged from fines and shaming to corporal punishment (Thierno Bah, 2003). William Clifford submits that in pre-colonial Africa death or exile was seldom used, it was only applied in response to crimes that threatened the safety of the community such as cases involving witches or repeat offenders (Clifford, 1969: 241-242).

In addition, Sharia law (Muslim law) was in operation in some pre-colonial African societies. Read (1969:105) quoted early British officials/administrator in Zanzibar as saying ‘

‘according to strict Mohammedian law murder may be atoned for, and in cases of mutilation the application of lex talions I need say scarcely say now no longer obtains in practice may be avoided by the payment of ‘diya’ or blood money with the consent of the victim, or, if he has been killed of his legal heirs’

However, the concept of punishment changed with the advent of colonialism with the introduction of imprisonment as a major form of punishment, and it became a tool for the expansionist tendencies of the colonial masters.

4.3 Punishment and imprisonment during the colonial era in African countries

This section will highlight the concept of imprisonment in some selected African countries during the colonial era. The focus of this section would be on some elements that characterised the prison system during the colonial era. These would include as the case may be types of punishment, prison condition, issue of segregation, nature of work amongst others.

Scholars such as Sarkin (2008), Ndlovu (2010) and Nwolise (2012) at different times agree that imprisonment as a form of punishment was alien to the African societies, though incarceration was in existence in some African societies prior to colonialism it was not used as a form of punishment. According to Pete (n.d), penal incarceration was rare in the pre-colonial

era. Nwoli (2010) submit that '*colonial administration introduced prison system to Africa.....*'. In a book 'A history of prison and confinement in Africa, Bernault (2003) established an inseparable link between the development of prison practices and the European colonial project (Ndlovu, 2010). Bernault posits that the prison '*did not emerge [only] after European conquest had imposed full control over colonies, but served as a crucial tool to carry on colonial wars against Africans*'. Other scholars such as Sarkin (2008) described imprisonment as '*a European import designed to isolate and punish political opponents, exercise racial superiority, and administer capital and corporal punishment*'. '

For most African countries, the colonial masters introduced imprisonment with their home country's orientation. A review of imprisonment in some selected African countries is done hereafter.

In the next section of this chapter, a review of prisons during the colonial era in some African countries namely, Kenya, South Africa, Cameroon, Nigeria, Zambia, Ghana, Uganda, and Angola was conducted

4.3.1 Prisons in the colonial era in Kenya

This section describes some of the features of the prison during the colonial administration in Kenya. Historically, the British government in 1895 formally took over the territory named it East Africa Protectorate which was transformed to Kenya Colony in 1920. The colonial administration spanned from 1895 to 1963 when Kenya became an independent and sovereign nation.

Prior to 1895, there was no evidence of pre-colonial prisons in Kenya (Clifford, 1974). However, following the establishment of British control in 1895 prisons were introduced to the colony of Kenya. Specifically, in March 1896, a prison was established in Mombasa and tailored along European prison, the prisoners were being employed for building public works (Consul General, 1978). Like in most colonised African countries prison and imprisonment as a form of punishment were alien to Kenya.

Detention and imprisonment occupy a central position within the historiographies of colonial and post-colonial Kenya. During the colonial rule, it was a haven for antagonists of colonial rule who wanted an end to colonialism (Anderson, 2005:314). In the post-colonial era, imprisonment became a means of keeping dissent voices against the one-party state in Kenya

away from public glare. According to Branch (2005), this category of detainees is referred to as heroes of the '*second liberation*' from one party rule.

The introduction of prison into Kenya met an initial resistance as imprisonment had no cultural relevance and this led to the introduction of colonial legal codes. The growth in prisons in Kenya during the colonial rule could be said to be phenomenal taken into account that prisons in Kenya grew to 30 by 1911. This growth according to Lonsdale (1990) was influenced by the expansion of colonial influence to peripheral areas.

The structure of prison during the colonial era in Kenya did not show a replica of individualising nature of Western imprisonment. Kenyan prisoners were not greatly segregated from one another inside penal institutions, neither were they distinctly separated from the outside world. According to Branch (2005), prisons were generally located in or near the principal town of each district, close to the administrative headquarters. He went further to submit that prisons in Kenya during the colonial rule generally do not have imposing structures typical of city center prisons in the metropole, instead they could be a ramshackle collection of huts and outhouses lacking basic infrastructures. Prison walls could be porous. The removal and isolation of prisoners from society and subsequently from fellow inmates often did not occur in Kenya (Branch, 2005:242).

One of the focus of this research is to find out if there have been changes to the prison structure of prisons in Kenya and in other African countries. Imprisonment in the colonial era in Kenya is said to be punitive rather than panoptic (Branch.2005:341). He described prisons and detention camps as the location of physical punishment, in the form of extremely unhealthy in the form of exposure to extremely unhealthy conditions, poor diet, and corporal punishment. According to Prisons Department Annual Report, 1931 prison authorities showed a greater enthusiasm for corporal punishment even more than their counterparts elsewhere. The principle of imprisonment at this time was punishment and not rehabilitation. This was attested to by Branch who submitted that imprisonment during the colonial era in Kenya was not defined by confinement but instead by its punitive character. In addition, it was reported that there was what was called dietary punishment as a form of punishment; this entails a form of dietary restrictions. As a result of the punitive nature of imprisonment, a lot of prisoners died. Prisoners were also exposed to hard labour.

Another major feature of the prisons in colonial Kenya was that most offenders served prison terms in detention centers and were convicted of contravening by-laws and other minor

offenses classified as an illegal activity with reference only to modified variants of English common and criminal law (Morris, 1972).

In essence, it could be concluded that within this period, Kenyan prisoners were serving sentences in institutions that have no historically derived meaning, having been convicted of activities that they would not themselves consider offenses.

Furthermore, overcrowding featured prominently in prisons in Kenya during the colonial period. The prison population kept on increasing. Branch (2005) citing TNA: PRO CO 544/34, Prison Departments Annual Report stated that between 1911 and 1931, the daily average people incarcerated since then double from 1 546 in 1911 to 3 306 in 63 institutions spread across the Kenya colony. The prison population kept on increasing from 3 000 in 1930 to over 4 700 in 1938. This increase could be attributed to the effects of the Great Depression, mostly due to defaulting on tax payment and the increasing inability of many to pay fines in lieu of imprisonment and detention. The overcrowding nature of prisons in Kenya during the colonial rule resulted in increased violence, unhealthy environment and prisoners being unhealthy. As a result of the unhealthy nature of prisons in Kenya during the colonial rule, a major health scandal arose in 1911 regarding high mortality rates among penal labor force from Nairobi prison constructing Nairobi – Thika railway line. In response to the escalating prison population, the colonial administration in Kenya introduced detention camps first in 1925 and later in 1933 (Kercher, The Kenya Penal System).

With regards to staffing, the prison department during the colonial era in Kenya was highly under staffed. As at 1930, there were only 20 Europeans staff and they were stationed at the headquarters in Nairobi while there were over 400 Africans in the payroll. The prison staffs were overstretched working in the network of prisons and detention camps. The working condition of the prison staff was nothing to write home about. The prison staff was described as '*dirty, (slovenly) and unkempt*' (Arnold, 1909). The staff were poorly educated, poorly trained, poorly disciplined and poorly paid. Working in the prison department was as a last resort for those who have no jobs. This contributed to the prison wardens having the wrong attitude to the work.

The element of segregation was introduced into the Kenyan Penal system. This provision was made for in the 1930 Prison Ordinance. It provided for male and female to be locked up in different cells; offenders that were on remand were separated from convicted offenders; juvenile (offenders below 16 years old) were segregated from older ones. First-time offenders

were segregated from habitual offenders; while civil prisoners were separated from recidivists. Finally, prisoners of different nationalities were separated, Africans, Asians, and European prisoners were separated one from another. However, the policy of segregation did not work due to proper record keeping and demand on space.

A significant characteristic of the Kenyan prison during the colonial rule was the imprisonment of political prisoners. In the early 50s, the growth of the Mau Mau which symbolises a major challenge to the colonial state and methods of political and local control in Central Kenya also affected prison life as they were an increase in Mau Mau prisoners. This category of prisoners challenged the existing negotiated order between prison inmates and warders. There were reported incidents of disorder that included disturbances at Nairobi Naroke prisons. At this period, Kenyan prisons became more violent.

4.3.2 Prisons in South Africa in the colonial era

The history of punishment and imprisonment in South Africa can be classified into two namely before 1911 and post 1911. This was due to the fact that the British colonies of the Cape Natal, Orange Free State, and Transvaal became the Union of South-Africa under Prime Minister Louis Botha.

The Dutch occupied the Cape in 1652 and a bodily form of punishment was used on offenders as the emphasis was on inflicting physical pains on offenders. The philosophy of punishment at this time was deterrence. The punishment was administered in public glare to accomplish that paramount effect. Corporal punishment was the order of the day and nothing was done to mitigate the pain. In addition, offenders sentenced to death were executed by using different methods which included crucifixion, through the gallows, breaking of limbs, impaling on the pole and strangulation. In some cases, it took days for the offender to die. The idea behind this form of punishment is to that was a public spectacle and cruel (van Zyl Smit, 1997: 476-477).

At the onset, the colonial masters did not use imprisonment as a form of punishment. However, there were detention centers where offenders were tortured to confess, the detention centers also served as a holding house during pre-trial of offenders (Neser, 1993:65). Those that were detained included offenders that have been condemned to death, those awaiting trial and debtors.

Another type of punishment used during the colonial era in South Africa was deportation. For the Dutch, it was important to remove the criminal(s) from the society. In some cases,

deportation was accompanied with corporal punishment. This period witnessed mass deportation to Robben Island and Dutch colonies in the East. Some of the people that were deported were opinion and political leaders who were opposed to the government of the day. There was no organised or formal program for those that were deported. They were considered as a nuisance that the society has no need for.

Punishment for transgression within the prisons was harsh. It included whippings, solitary confinement, dietary punishment and additional labour. Offenders were at different times held in chains and shackles in the Dutch East India company's slave lodge and forced to hard labour in public works. British occupation between 1795 and 1803 however led to a decline in physical punishment and replaced it with incarceration.

After the abolition of the slave trade in 1807, there was a shortage of labour. Prisoners were made to work on public projects such as the building of roads. In the 1870s, the practice of hiring out prisoners to private persons was commonly applied. The prison system at this period was used primarily to provide labour. This practice of hiring prisoners for labour was legally established when magistrates were empowered to release prisoners in terms of pay to work for private persons.

In 1885, De Beer, Diamond mining company became the first private company to employ convicts for labour and went a step further by building a prison which was controlled by the company. The company was to *'pay the state 2d per man, per day for the first one hundred prisoners'* (Cosy, 1977:122). It was reported that the company employed prisoners from Kimberley prison. During the Great Depression, prison labour was made available to the agricultural sector at low cost. Farms such as Glenroy Sugar cane farm located near Dududu on the South coast of Natal had bought prisoners to work on the farm. The farmers had to provide accommodation for prisoners and detain them in their jail (van Zyl Smit, 1992:26). The practice of hiring prisoners to private companies or individuals was to alleviate the overcrowding nature of the prisons.

The prisons during the colonial era in South Africa were in dilapidated buildings and these buildings were overcrowded. Pete (2008) corroborated this by submitting that the penal system of colonial Natal province which was established in 1825 was a good example of the chronic and enduring nature of overcrowding which characterised many prisons in South Africa. According to him, the overcrowding nature of the prison then was as a result of African

resistance to restrictions aimed at the social control of the indigenous population resulted in a large number of what is called political prisoners being confined to the prison of the colony.

The most common offense for which Africans were jailed was a failure to carry their pass documents. According to Ormond (1986), 1.9 million Africans were arrested for failing to carry their pass documents.

Another feature of imprisonment during the colonial era was censorship. Details about prison condition during apartheid years are very hard to come by, Article 44 (1) of the Prison Act No 8 of 1959 for many years operated an effective legal obstacle to the publication of any information about prison condition on the experience of imprisonment (Gready, 1993:491).

Segregation along racial lines also featured significantly in prisons during the colonial rule in South Africa. The Breakwater prison that was established in 1859 was the first prison to introduce racial segregation. In 1911, after the creation of the Union of South Africa, the Prisons and Reformation Act consolidated earlier colonial legislation and strict segregation was enforced. In 1959, major new legislation governing the prison was passed by the National Party Government. The Prison Act reiterated the rules of segregation in prisons in the policy of apartheid in all parts of South Africa.

Section 23 (1) of the 1959 Prison Act stipulated that where whites and blacks are held in the same prison

(b) as far as possible whites and non- whites persons shall be detained in separate parts thereof and in such a manner as to prevent whites and non – whites prisoners from being within view of each other and

(c) where practicable non- whites prisoners of different races shall be separated

Prison regulation further mandated that solely white prison personnel guard white inmates. Religious advisers catering for white inmates were also exclusively white. White prisoners were entitled to a different diet scale (only black prisoners who received the same amount of food as white convicts were those on the death row).

In the 1960s prisons played host to a lot of political prisoners notably Nelson Mandela when the imprisonment of political detainees and sentenced political prisoners became a feature of South Africa prisons. The detention of high profile political prisoners raised great concern

among international organisations such as the Red Cross, United Nations, and Amnesty International.

4.3.3 Prison in Cameroon during the colonial era

Prior to colonisation punishment in Cameroon ranged from fines to corporal punishment and imprisonment. The Mandara kingdom reached its peak in the 19th Century had a 'classical penitentiary system'. According to Thierno Bah (2003:69), the titles of various functionaries from this era indicate the organisation behind the prison. The palace prison or gulfunye housed condemned criminals. The prisons were under the control of Tlavunge.

Further divisions of personnel indicate a complex penitentiary system that utilised measures such as solitary confinement, starvation, and physical brutality. Evidence abounds that in the early 1800s, the Fulani emirate in northern Cameroon was using imprisonment and forced labour. The treatment of prisoners was harsh and primitive. For instance, prisoners were held to the floor with ropes, primitive handcuffs or iron chains attached to the stocks on the floor. For the local population, these prisons symbolised terror (Bah 2003:77). Prison cells during the colonial era in Cameroon were apparently little more than thatched huts.

4.3.4 Prisons during colonial era in Nigeria

Prior to the advent of the British colonial masters who made Lagos a colony in 1861, there was in existence the use of confinements and incarceration among some pre-colonial societies in Nigeria. Societies such as the Tivs, the Ibos, the Yorubas, the Edos in the Mid-Western part and the Fulani (Awe, 1968). The Yorubas in the South Western part of Nigeria use to hold debtors in a place they called 'tubu' synonymous with prison. Having a tubu; was a common phenomenon especially amongst the elites where they keep criminals (Shajobi-Ibikunle, 2014: 95). For the Edos in the Mid-Western part, they have what is called Ewedo, was a place where offenders were detained until such a time when they are sold into slavery or released to their relatives (Bradbury, 1957). In the case of the Ibos in the eastern part, Meek (1970) reports that relatives used chains to hold a murderer while inquiries are made to establish the motivation for committing such heinous crime. Among the Hausas in Northern Nigeria, offenders were also put in stocks in a conspicuous place where passers-by could jeer at him (Hassan & Naibi, 1962).

However, it is important to mention that in the Nigeria traditional societies, imprisonment was not a form of punishment, those centers served only for detention purpose (Ogunleye,

2007). Prison or imprisonments a punishment was not part of the culture of the traditional societies of Nigeria.

The organized prison system was introduced to Nigeria through the Lagos colony in 1861 and the Northern Protectorate in 1900 (Shajobi-Ibikunle, 2014:95). This assertion was supported in the history of Nigeria Prison Service by a Nigeria senior prison official Orakwe (2017) that the origin of modern prison service in Nigeria can be traced to the declaration of Lagos as a colony in 1861. According to this prison official, the focus of the then British administration was to protect their legitimate trade, guarantee the profit of the British merchants as well as guarantee missionary activities. To achieve this, a police force comprising of twenty-five constables was established in 1861 and this was followed by the establishment of four different courts in 1863. To complete the government machinery in 1872, the Broad street prison was established with an initial capacity of three hundred. Each cell is just 1.2m x 2.4m (4ft x 8ft). The facility was built with bricks which were imported from Great Britain. In 1849, there was evidence of prison in Bonny, Niger Delta but not much is known about its size and content.

The colonial masters applied the British penal system and did not take into consideration the indigenous system of confinement. The colonial prison system was a decentralized system governed by different forms of administration ranging from that of District commissioner and residents to that of Native authorities run directly by the colonial administration, while the other was run by the authorities. It is important to note that these courts and prisons were active courts only in name, as the traditional native court and the system of punishment of offenders still continue unrecognized by the British government. According to Ekpe (1997), the British system of prison administration thus set a standard which was very difficult to keep and classifications initially in 1832 did not go beyond the division into juveniles, felons, debtors and those awaiting trial.

By the end of 19th Century, the British colonial masters have been able to penetrate the hinterland hence by 1910, prisons were already established in Degema, Onitsha, Calabar, Benin, Ibadan, Sapele, Jebba and Lokoja.

The prisons were not properly administered as there was no systematic penal policy from which direction could be sought. Colonial prisons in Nigeria were also characterised by overcrowding. According to a Colonial report for 1898, 676 males, 26 females, and 11 juveniles were imprisoned at Broad Street during the year (BBC News, 2014). This was a facility built for 300 inmates.

Another major feature of the prisons during the colonial era in Nigeria was the poor health and sanitary condition. According to Awe (1968), the prisons lacked good health care facilities and have poor sanitary conditions. This led to a high death rate. The death rate prisons were so high in 1918 and 1919 that a commission of inquiry had to be set up in 1920 to investigate food and other matters affecting the health of the prisoners in the southern province. There was no provision for quarantine facilities for infected prisoners and it was only in 1926 that cells for isolated cases were built in Kaduna and Jos prisons

The prison policy at this time was not to reform offenders but was to further the business and colonial interest of the British. The prison became a source of labour for the colonialists. Prisoners were engaged in manual labour such as road repairs, conservancy, reclamation of the lagoon, burying dead paupers among others. Ogunleye (2007) submitted that prisoners work between the 6 am to 4 p.m. daily with an hour break. In addition, the prison was used as a mechanism to enforce law and order.

Prisons during the colonial era in Nigeria were punitive and had no iota of rehabilitation. It served the purpose of punishing those who had the temerity to oppose colonial administration in one form or the other as well as curbing those who might want to stir up trouble. Over the next few decades the prison housed several notable thorns in the side of the British colonialists including the writer and political activists such as Herbert Macaulay and Pa Michael Imoudu, a trade unionist who led strikes in the 1940s and whose release from prison prompted a massive anti-colonial rally.

Deportation was another instrument of punishment applied to indigenes that oppose the colonial administration. This was the case of King Jaja of Opobo and King Dappa of Bonny both of Niger Delta. They both vehemently opposed the then colonial administration and were punished by deporting them from their kingdoms.

Regarding staffing, Orakwe (2017) claimed that the colonialists did not see the need to recruit trained staff as there was no clear-cut systematic penal system to give direction and prisoners were used mainly for public works and menial jobs as deemed fit by the colonial masters. There was no form of training and development for prison staff members during the colonial era. In some cases, policemen were asked to perform the duties of a prison staff while at other times ex-servicemen were recruited to serve as prison staff.

In 1917, prison regulation was published to prescribe admission, custody, treatment and classification procedure as well as staffing, dieting, and clothing regimes. The prison regulation did not, however, stipulate any specific type of treatment for inmates, it was just a policy of containment of those already in the prison.

In 1934, Lt Col, V.L Mapp, a military officer who had an understanding of the workings of a prison was appointed by the then Governor Donald Cameron. He made efforts to introduce some form of modernity to the prison system. His main focus was having a unified prison structure for the whole country, unfortunately, he did not succeed. However, he was able to extend the substantive Director of Prisons, supervisory role and inspector power over the Native Authority prisons, by this time dominant in the Northern part of Nigeria. During his tenure, the Prison Wardens Welfare Board was established. He was succeeded by R.H Dolen.

R.H Dolen (1946-1955). Dolen was a trained prison officer who had garnered a wealth of experience in prison administration in Britain, as well as some of her colonies. Most of the major developments in the history of Nigeria Prison, can be attributed to him. Some of his contributions include:

- Made classification of prisoners' mandatory
- Introduced visits by relations of inmates
- Reintroduced in 1949 vocational training in the National Prisons as a cardinal part of penal treatment
- Introduced progressive earnings for long-term offenders.
- Transferred the headquarters of prisons to Lagos from Enugu so that it will be close to Department of State.
- Introduced moral and adult education to be handled by competent ministers for both Christians and Christian education.
- Programmes for relaxation and recreation
- Formed an association of the care and rehabilitation of discharged inmates.
- Saw to the appointment of educated wardresses to take charge of the female wings of the prisons and he generally tried to improve the service conditions of the prison staff.
- In addition, he took classification a step further when in 1948, he opened four reformatories in Lagos and converted part of the Port – Harcourt prisons for the housing and treatment of juveniles.

- Built an open prison in Kakuri, Kaduna to take care of first offenders who had committed such crimes like murder and manslaughter, and who are serving terms of 15 years or more. The idea behind this was to train them with minimum supervision in agriculture so that on discharge they could employ themselves gainfully (Orakwe,2017).

4.3.5 Prison in Zambia during the colonial era

Before the advent of colonial masters into the Northern Rhodesia, most indigenous African tribes enforced their customary laws through the courts (Chanda,2010:7-8). In cases involving the safety of community for instance, in the cases of witchcraft and persistent offenders, death or exile was the usual penalty. Prisons were unheard of and cases of murder, assault and battery and property damage were addressed by compensation and only provoked penal sanctions when their effects threatened the stability of the community as a whole (Clifford,1974).

British South Africa company brought with it penal sanction when it came to administering Northern Rhodesia in 1924 when the British government took over the administration of the territory. A governor was appointed and Northern Rhodesia became a colonial territory with laws and sanctions modeled after those of England (Har,1984/1985).

The philosophy behind imprisonment during the colonial era in Zambia was deterrence. However, the reformatory theory was adhered to in cases involving children of tender years and in some cases first time offenders. The types of prisons that were built were not meant to reform but hold offenders. The purpose of the prisons was custodial and not reformation. There were no classification or segregation facilities despite the fact that the 1946 Ordinance provided for such facilities

4.3.6 Prisons in Ghana during the colonial era

The traditional Ghanaian communities did not have official prison system until the British Council of Merchants established a network of harsh prisons in forts such as the Cape Coast castle (Aba-Afari, 2011:10). Penal system in the then Gold Coast (the name changed to Ghana in 1957 upon attaining independence) started in an irregular manner from the early 1800s when the administration of the Forts on the coast was in the hands of a committee of merchants under the chairmanship of Captain George Maclean, who exercised criminal jurisdiction not only in Forts but also outside them. By 1841, a form of the prison had been

established in the Cape Coast Castle where debtors, possibly were incarcerated. By 1850, there were prisons in four Forts, holding a total of 129 prisoners who were kept in chains and usually worked in road gangs (Seidman, 1969:435). The Prisons Ordinance of 1860 outlined regulations for the safe-keeping of prisoners. Later ordinances further defined the nature of the colony's prison regimen, or "separate system," which required solitary confinement by night, penal labor, and a minimum diet. The 1860 Ordinance was a mere series of rules for the safekeeping of prisoners, embodying no comprehensive philosophy of punishment. The diet was said to be generous enough, prisoners were given 6lbs of kenkey daily with a pound of fish thrice weekly. During the 1860s punishment of imprisonment became increasingly harsh, with the introduction of penal labor in the form of short drill and treadmill (Seidman,1969:436). Several corporal punishments were administered by the dreaded cat-o-nine-tails and prison diets were diminished to a level at which they were only just sufficient to keep prisoners alive (Seidman,1969).

From 1875, when the Gold Coast was formally created as a colony, British criminal jurisdiction was gradually extended to the entire southern part of present-day Ghana and in 1876, the Gold Coast Prison Ordinance, modeled on the English Prisons Act of 1865 was introduced. The caretaker functions the early prisons which consisted of mere rules of mere rules for safe keeping of prisoners were established in the 1880 Prisons Ordinance (Ghana Prison Service, 2015). These regulations showed that prisoners were to be locked into separate cells at night, so far as accommodation will allow. Convict prisoners were not to speak or make any signs to any other prisoners, or to make any signs to any other prisoner, or to sing or whistle or even to make complaints to any but to senior prison officer or a visitor. Letters and visits were permitted only once in three months. Prisoners above the age of 16 years were to do short drills for three hours per day.

Regarding staffing, by the early 1900s, British colonial officials administered the country's prisons and employed Europeans to work as guards in the prisons. After World War II, Ghanaians gradually replaced these individuals.

The unsatisfactory state of the prisons in the years that followed led to the placing of the Prisons Department under the Police Administration. In 1920, however as a result of increased number of prison establishments and staff, the Police and the Prisons Departments were again separated, and the Prisons department was placed under an Inspector- General of Prisons. Captain Cookson was appointed as the first Inspector

General of Prisons, his request was enacted by the Governor in Council in 1922 and became effective on January 1, 1923.

Prior to 1920 convicts in the pre-colonial Ghana were involved in hard labour. However, in 1920 the practice of punishment diet without hard labour was stopped (sectional paper viii Leg. Council 1919-20 app. Adm 14/15). Likewise, from this date, prison penal labour was abolished. Prison labour and Trade prisons constituted a reserve pool of inexpensive labor for the government, and in 1908 the annual report pointed out with pride to a growth in the return from prison industries from E413, 19s -16d in 1904 to E 2693.11s -4d in 1908. However, in 1910, the Governor ordered that prison labour must be restricted only to government departments. In 1906, many people placed orders for work by prisoners. But in 1910, it was stopped because this system was displacing local industries. In 1918, the public was again permitted to use prison labour. For this reason, larger sheds were built to accommodate the boot making shops (Dept Report, 1918).

During this era, the major effort of the prison system, thus, turned away from harsh punishment to teaching prisoners a trade (Salifu, 1980). In 1906, a Briton, Major Kittson, who had visited the British prisons in Gold Coast while on leave, wrote that the prisoners '*took a delight in learning a trade*' (despatch no 100, March 7, 1904). In 1927-28, there were two European technical instructors and sixteen trade instructors for a daily average of 1 706.25 prisoners.

During colonial era in the then Gold Coast, there was no classification of prisoners. Salifu (1980) reported that according to the annual report of 1897, prisoners were never classified and separated. The report went further to state that the prisoners work and sleep together in a group of 6 -15.

In 1945, industrial institutions which receive boys between the ages of 16 and 21 were established under the school ordinance of 1945. As at 1948, there were 29 penal establishments maintained by the Prison Department. Total lockup was 3 000 which was less than that of 1947. Staff controlling prisons was increased by only three officers and eleven escort warders. In all, they were 15 officers and 650 men (Salisfu, 1980). There were five central prisons, two prison camps and one industrial institution which were all managed by D.C.S. Native authorities maintained 41 prisoners during the year 1948. No more prisoners were sent to Salaga jail and that of Lawra was closed. Between 1947 and

1948, a new prison was opened at Ankafu for criminals suffering from leprosy and tuberculosis.

4.3.7 Prisons in the colonial era in Uganda

Historically, imprisonment was not a form of punishment in traditional African setting in East Africa where Uganda is situated. For example, in the kingdom of Ankole and Buganda (Ankole and Buganda are some of the kingdoms that later formed present Uganda at independence). However, imprisonment was introduced to East Africa after the British incursion which was followed by colonial rule. During the colonial rule in most traditional societies of East Africa, corporal punishment and death penalty were seldom used. The death penalty was only used as a punishment of last resort. Bernault (2009); Read (1969) identified ostracising the offender which could be in form isolation within the community or by means of a formal ritual

In the British colony of Uganda, Read (1969) reported that the first prisons were established during the 18th and 20th century. It was also on record that a dual system emerged with some prisons controlled by native authorities and other colonial masters, with the native government of Buganda establishing the first prison in Uganda soon after the declaration of the protectorate in 1894 (Ssanu, 2014).

During the colonial times, the principal penal facility was Luzira prison near Kampala, although jails were common in larger towns. Prisoners in Luzira were separated according to categories such as long-term convicts, 'recidivists', women, children, Asians, and Europeans. Cells for specific punishments and death row were also separate from the regular prison population, and the facility had several workshops and a hospital. The government also maintained smaller prisons for local convicts in Buganda, Bunyoro, Toro, and Ankole. Prison terms of less than six months were generally served in smaller jails located in each district in the British colony of Uganda (www.countrydata.com, 1990).

Kamushiga (n.d) reports that between 1896 and 1899 during the British colonial era, prison functions were situated within Uganda Protectorate Police. The Uganda Armed Constabulary Ordinance of 1903 was the first instrument to establish legally the prison's functions but this was disguised under the focus of the ordinance of policing. Later, in 1907, the Prison Ordinance, the 1908 Uganda Identification of Prisoners Ordinance confirmed this function. The prisons service attained full autonomy in 1958 when the Prison

Ordinance, Rules, and Regulations came into existence. The Prison ordinance, 1958 (revised in 1964) together with Prisons Rules and Regulations made there under continued to provide the legal framework for the operations of prisons until 1994 (Kamugisah, n.d).

Natives were incarcerated for minor offenses such as tax defaulting and civil felonies that would not have warranted hard punishment. According to Sarkin- Hughes (2008), the primary goal of imprisonment during the colonial era was barely to rehabilitate criminals or reintegrate them into society. In fact, the prison system successfully created a subclass of humans who were available as cheap labour, subjecting them to inhumane living conditions (Ssanu, 2014). It was such an irony that various methods of torture and cruel punishment were introduced during the colonial period in Africa at a time when Europeans were doing away with using torture as a means of punishment in Europe. The colonialists viewed corporal punishment as a cost-effective means of dealing with colonial subjects in a manner suitable to their status (Sarkin – Hughes, 2008).

Regarding personnel, Kamugisha (n.d) reports that the prison system in the colonial era did not employ any African officers until 1936 when the first remunerated African staffs were appointed. However, it was not until 1994, following the East African Commissioners of Prison Conference held in Kampala that the process of 'Afrikanisation' of the Uganda Prison Service began. In 1955, the first African Commissioner of Prisons was appointed in 1964, two years after the country's independence (Ssanu,2014).

4.3.8 Prisons in the colonial era in Angola

Imprisonment as a form of punishment was first introduced to Angola by the Portuguese colonial masters. The category of people incarcerated included criminals, slaves and those deported from Portugal and Brazil. The Portuguese continued to banish criminals to Angola into the 1930s as part of an alternative to execution (Roth, 2006).

The first major prison was constructed in Angola was in the fortress Sao Miguel in 1756, despite the fact that different detention facilities were built Sa Miguel remained the place of confinement till the 19th century.

It is on record that initially most of the prison population was white but over time the prisons had black prisoners as well. Prior to 1624, Portugal had not created a separate prison administration neither was there a budget for prisons. This shows clearly gross neglect for

the prison and the physical, sanitary, feeding and health conditions of the inmates are better imagined.

Prisons were meant to prevent individuals from fleeing to freedom. It was not until in 1742 was the first definite term of sentence imposed (Vanisa, 1989:55-68). In 1869 and 1876 Lisbon proposed the creation of penal farms but it did not take off until 1883. The more modern concept of central prison did not take off until the 20th century. But until the late 1960s, the main correctional tool in Angola remained forced labour.

4.4 Prisons in Africa countries since after independence

Despite the fact that most of the countries in Africa have attained independence from their colonial masters, some of the African countries are still making use of the penal system they inherited from their colonial masters. This is notwithstanding the fact that the colonial master did not take cognisance of the culture and values of African into consideration when formulating these penal policies. In fact, some of the colonial masters just adopted their home country's penal system. This could be one of the reasons why the Africa prison is in crisis today.

In addition, some of the countries in Africa are signatories to international treaties and conventions regarding treatment of prisoners. Some of these treaties are:

1. UN Nelson Mandela Minimum Standard Rules for Treatment of Prisoners.
2. UN International Convention on Civil and Political Rights 1996;
3. UN Convention Against Torture and Ill-treatment 1984;
4. UN General Assembly Resolution 43/173: Body of Principles for Protection of all Persons under Detention 1988;
5. UN General Assembly Resolution 45/110: Standard Minimum Rules for Non-Custodial Measures 1990;
6. African Charter on Human and People's Rights 1981.

Evidence abound that most of the African countries have not been adhering to the dictate of these conventions. This study has tried to identify some of the challenges facing prisons in

Africa after independence. It may not be possible to highlight all these challenges as this is not the primary focus of this study. Here are some of the challenges:

One of the challenges inherited from the colonial masters in Africa prisons is overcrowding. The challenge of overcrowding in African prisons still persists even after attaining independence as most of the prisons in African countries are still grappling with overcrowding. For instance, in Zimbabwe, it is reported by the Permanent Secretary, Ministry of Justice that regardless of the fact that two thousand prisoners were released in early 2014 as a way to combat the overcrowding nature of Zimbabwe prisons, there were over 20,000 prisoners in Zimbabwe jails as at December 31, 2014. The 46 jails were designed to have a total lockup capacity of 17,000.

In 2003, the US Department of State issued a "scathing" report on Cameroonian prisons in which it noted that Kondengui Maximum Prison was severely overcrowded, housing a population of 9,530 in space meant for 2,000 (Thomas, 2003). In Uganda, according to the Auditor General of Uganda, the prison population as at 2009 was 32,000 (Office of the Auditor General, 2010) and the population had increased to 37,936 as at November 30, (Ssanyu, 2014:8). The official capacity of Uganda prisons is 16,612. The situation in South Africa is no different, The Minister for Corrections, Sibusiso Ndebele in 2013 put the total prison population of South Africa at 152,514 as against the total prison capacity of 120,000. In Nigeria, the issue of overcrowding is a major problem that seems to defy remedy. A case in point is a situation in Owerri Prison, in South East Nigeria, according to Deputy Controller of Prisons in Charge of the prison *'this prison was initially built for 500 inmates, when I took over in August 2015 but today (February 2016) we are harboring 3,000'*. Regarding Zambia, it was reported after a tour of prison facilities by the Human Rights Commission, that most prison facilities held more than twice their holding capacity. For example, Choma State prisons built in 1952 with capacity of 120 inmates was found to have a population of 196, Mazabuka State Prison meant for 65 inmates was found to be extremely congested with 202 inmates and Namwala State Prison built in 1968 had 164 inmates instead of 120 (Human Rights Commission Report, 2006:14). The overcrowding nature of African prisons is unacceptable, barbaric and a negation of the fundamental human rights of the prisoners.

Consequent of the overcrowding nature of African prisons is the unhygienic and deplorable prison conditions. This leaves much to be desired. Nyaura & Ngugi (2014:5) argues that prison conditions in Kenya have been dire and punitive since independence. According to these authors,

the civil society in Kenya perceives Kenya prisons as '*death center*' (Nyaura & Ngugi, 2014:9). The prison condition in Nigeria is described as dehumanizing and called '*death trap*' (Agomoh, 2015). Zimbabweans talk of '*going to jail to die*'. Some of these prisons lack basic facilities. Omboto (2010) described Kenya prisons as being harsh, characterised by overcrowding and congestion, poor diet, degrading clothing and beddings, lack of clean water, poor sanitation, infectious diseases, homosexuality among others. The prison condition according to Mabliza Virgina, the Permanent Secretary Zimbabwe's Ministry of Justice is characterised by lack of food, insufficient access to medical care, lack of blankets and clothing. The Officer in Charge of Chikurubi Maximum Prison, Zimbabwe informed members of Zimbabwe's Parliament committee on Human rights that '*food is not all that adequate, we do not have enough food*'. Laying credence to the lack of food in Zimbabwe prisons lawyers for Human Rights posits that more than 100 prisoners die of malnutrition. In Uganda, poor conditions in the prisons in form of severe health risks and had led to a number of deaths from malnutrition, dehydration, dysentery, and pneumonia. In 2002, the Uganda Human Rights Commission reported that two prisoners died in Mbarara local prison when they were locked up for two days without food and water for their inability to work (Dissel, 2001). In 2011, Amnesty International described the prison conditions in Kondengui Central Prison, a maximum security prison in Yaoundé, Cameroon to be "*harsh, with inmates suffering overcrowding, poor sanitation and inadequate food*" (Amnesty International, 2011). In Ghana, the UN Report of 2014 described the overcrowding nature of Ghana prisons as extreme in a number of serious violations, including inadequate nutrition, insufficient access to medical care, poor sanitation, personal insecurity and absence of rehabilitation services.

Another major problem confronting most African prison system is staff welfare and poor condition of service. Studies have shown that the welfare package and condition service for prison staff is deplorable. Ayade (2010:26) described the working condition of Nigeria Prison Staff as being deplorable, remuneration poor, inadequate communication gadgets, and lack of transport. Furthermore, he asserted that in some cases, prison staff buy uniforms by themselves and identified lack of accommodation as major challenges of prison staff. The prison staff situation in Kenya is no different. Omboto (2013) identified poor terms and condition of service, poor working condition, meager salary, the unfavourable scheme of service that do not give clear-cut career path. He went further to depose that '*warders have no uniform; they buy their own whistle*'. The morale of prison staff members is low. This poor state of staff welfare and condition of service led to a countrywide strike by prison officials in 2008 demanding for

good working terms and condition, improved housing and uniform (Ndimu, 2013:48). The Ghana Prison Services has decried what it describes as poor conditions of service of its personnel. According to the GPS, the meager nature of salary as well as allowances given to personnel has left them perpetually assigned to hardship. Prison guards in Cameroon are poorly trained, ill-equipped and their numbers inadequate for a big prison population.

Despite the fact that most African countries are signatories to some international conventions such as United Nations Nelson Mandela Standard Minimum Rules for the Treatment of Prisoners, the treatment being meted to prisoners does not meet international standards. In addition, some of the prison administrators claim to have moved from punitive and punishment to rehabilitation, evidence abounds that treatment meted out prisoners in African prisons is still cruel, barbaric and punitive. For instance, Juan Mendez a United Nations Rapporteur having completed a tour of prison facilities in Ghana in 2013 described the treatment meted to prisoners in Ghana as being cruel and degrading inhuman. He reported the evidence of corporal punishment 'inmates known as *"black cats"* were singled out to whip other alleged stubborn colleagues with a cane. We were dismayed to see that they have canes- we did not actually see any discipline, but we did see them brandishing their canes and threatening inmates'

In Kenya, there is still the prevailing feature of mistreatment of prisoners and lack of the observed freedoms, privileges, and rights. According to a report by Amnesty International (2000), there were clear indications that torture and ill-treatment are widespread and are used to discipline prisoners as well as taking place through indiscriminate attacks. Prisoners are beaten for failing to obey orders. Another major concern in Kenyan prison was expressed by ex-offender that prison warders are spreading HIV/AIDS by using hippo hide whips consecutively to punish prisoners. Corporal punishment is allowed, up to twelve strokes for adult prisoners, and prisoners may also be punished by restricted (penal) diet and confinement of up to 30 days in a separate cell (Nguyana & Ngugi, 2014). This form of retributive punishment goes against the utilitarian rationale for punishing offenders. The Kenyan prison system is obliged to observe the prisoners' rights as stipulated by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) OF 31 July, 1957 and 2076 (LXII) of 13 May 1977.

The situation is not too different in Ugandan prisons where there are reports that hard labour and maltreatment are commonly reported practices in Uganda's prisons. The Human Rights

Watch (HRW,2011) observed that prisoners in Uganda are subjected to long hours of crop cultivation, fetching water, and firewood without given a choice whether they want to participate or not. They work in oppressive conditions of heat and rain and are sometimes intentionally denied food, water or bathroom breaks. They are beaten for being slow or handcuffed, stoned or burned if they refuse to work. Vulnerable prisoners including children, the sick, the elderly and pregnant women were also beaten and forced to work. HRW (2011) noted that this is contrary to the 1995 UN Standard Minimum Rules for the Treatment of Prisoners that Uganda has committed to observe, which provide that labour prison must not be afflictive but rather of a vocational nature, and prisoners should be allowed to choose the type of work, they wish to perform (Ssanyu,2014).

In Zambia, the Institute of Security Studies reported the use of corporal punishment in Zambia prisons. The report indicated that prisoners in Zambia are sometimes beaten and treated cruelly. In some cases, prisoners were injured and in a particular case in Chondwe Open Air Prison in Ndole, a prison official was charged to a magistrate court for causing grievous bodily harm to the convict who was accused of trying to escape from custody. The prison warder used a stone to pummel the convict to the extent that the convict is now confined to a wheelchair (Chanda, 2010:15). In 2017, the Chairperson of the Human Rights Commission in Zambia reported that a prisoner was beaten with a hoe handle and dirty water poured over him. However, as expected the prison authority denied the incident alleging misrepresentation. This cruel, barbaric and inhuman type of treatment of prisoners obtainable in African prisons in the 21st Century makes one wonders if Africa is in another world, as most countries of the world have turned from cruelty to using prisons as a form of corrections exemplified by rehabilitation and reformation. With this type of treatment, it is the opinion of the researcher that it is doubtful if rehabilitation could take place in an African prison. This has a lot of implications because a prisoner that is not reformed would ultimately be released from prison into the society. What now becomes of such society that unreformed inmates are released to?

The impact of the building structure on prisoner behaviour, rehabilitation cannot be overemphasised. In a study conducted in the Netherlands, Jacobs (2014) found out that building styles, floor plans, and other design features have a significant impact on the way Dutch prisoners perceive their relationship with prison staff. The implication of this finding is that architectural design of prison has an effect on the prisoner and their relationship with others and their rehabilitation. Though the study was conducted in the Netherlands and not Africa, it

calls for a possibility of replicating this study in Africa and explore the effect of building type and design on offenders.

Most of the prison buildings were those that were built and inherited from the colonial masters of different African countries. Therefore, it should not be news that most prisons is in a state of disrepair. The buildings are old, poorly ventilated, with inadequate sewage systems (Sarkin,2008). In Nigeria, the majority of the prisons were built by the colonial administration and Native Authorities (Ayade, 2010:27). The physical condition of these prisons is in an alarming state of disrepair, with no sense of maintenance culture or renovation indicative of Nigerian government neglect (Civil Liberties Organisation,1996). However, some few ones that were built recently were constructed with sub-standard materials which do not come close to a modern prison. Aside from the fact that the buildings are archaic, the researcher during his voluntary work with prisoners in Lagos State (2002-2014) observed that most of the prison yards in Nigeria are surrounded by a very high walls giving an indication that the prisoners are shut away from the rest of the world. The cells have small windows located very close to the roof which does not allow for good ventilation. These small windows have very thick iron rods to provide security. Almost all the doors to the cells are made of metals with small windows that are usually locked with the prisoners inside. Most of the floors are in a horrible state. Some of these buildings are not to be used to rear animals. It is quite dehumanising. Describing the conditions of prisons in Ghana, a prison official said '*Tmmale Prison central has only three long ancient buildings cracked walls and leaking roofs.*' Nguyama &Ngugi (2014:4) submit that the state of buildings in Kenya prisons lack expansion and in dire need of refurbishment. Pointing to the fact that most buildings in Kenya prisons may be antiquated and old-fashioned. The irony of the matter is that funds may have been allocated for the refurbishment of these prisons but the funds may have been misappropriated. These types of buildings in African prisons can only help in the spread of communicable diseases, harden the offenders the more and make rehabilitation a mirage.

A combination of these challenges confronting African prison would make it difficult if not impossible for the rehabilitation and reformation of prisoners possible. Rehabilitation of prisoners is one of the cardinal points of the philosophy of corrections. Rehabilitation has been part of many regional instruments aimed at improving prison condition throughout Africa. For example, the 2002 Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa call for the promotion and reintegration of former offenders (Sarkin,2008),

However, it has been a little bit difficult for the actualisation of the letters of the declaration on rehabilitation. This is due to a combination factors. For example, Ssafani (2014) identified overcrowding as a barrier to rehabilitation among Uganda prisoners. In Kenya, Nyaura & Ngugi, (2014:10) revealed that the prison system lacks critical skills with regards to penology and corrections. The authors went further to clarify this as lack of professionals such as psychologists, social workers, psychiatrists, health workers among others. In another study in Kenya, Omboto (2010:39) reasoned that prison staff lacks the prerequisite qualification required for rehabilitation purposes. He went further to allude to the fact that some prisoners have qualifications from universities and Colleges of Education whereas the case is different with prison officials who have no such qualification. In Ghana, most workshops for reformation and rehabilitation of prisoners are in a deplorable state. Equipment and tools are not only inadequate they are obsolete, hence the need for replacement (Awolugutu, 2015). Agomoh (2015) identified lack of adequate data on prison inmates to aid their reform and reintegration, lack of adequate skills and capacity of staff on rehabilitation, reintegration of prisoners, and lack of adequate facilities and logistics to aid rehabilitation, reformation and reintegration of prisoners as some challenges the prison system in Nigeria is having regarding prisoner's rehabilitation.

Nonetheless, some countries such as Uganda, South Africa, Botswana, and Nigeria have tried to implement the policy of rehabilitation, they are however confronted with challenges which include dwindling resources of most countries as well as lack of political will. The challenges facing Africa prisons are much but a mention of a few of them is done in this chapter. Nevertheless, these challenges can be surmounted if there is a political will, sincerity of purpose and collaboration between various stakeholders in the penal sector.

4.5 Chapter Summary

This chapter highlighted that imprisonment was not used as a form of punishment in most traditional Africa societies. In Africa, societies existed it was to serve as detention centers for those awaiting trial, debtors, those that are awaiting further punishment or those waiting to be executed. The chapter also identified different types of punishment in African traditional societies which include compensation, ostracising, banishment, spiritual sanctions, payment of fines and shaming.

Furthermore, it was established that imprisonment was introduced by different colonial masters using the penal justice system of their home countries. It was also mentioned that in most cases

the penal system was introduced without giving consideration to the culture and customs of Africans. The philosophy behind imprisonment during the colonial era was punishment. These punishments were found to be punitive, brutal, barbaric, archaic and inhuman. Imprisonment during the colonial era was employed to further economic and political conquest of the colonial masters. Prisoners were used for manual labour, corporal punishment was employed and the prisons became a tool to lock up people and activists who oppose the colonial rule.

In this chapter, various challenges bedeviling the post-independent African prisons were identified and discussed. Some of these problems include overcrowding, prison condition, rehabilitation, treatment of offenders, staff welfare and physical structure of prisons. It was observed that not much has changed since most of the countries attained independence. The treatment of prisoners in most countries are still cruel, the prison condition is appalling. Most of the prisons are overcrowded and congested, the staff is not motivated and most building structure were colonial relics that are not habitable for human beings.

Though the challenges in most African prisons are much, the researcher is of the opinion that if some of the recommendations made by different researchers are implemented, if there are a political will and a change of orientation of the public towards offenders and prisons in general, there would be a synergy of all stakeholders in improving the state of our prisons and the offenders.

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Chapter 5

Prison conditions, administration, and independent monitoring

'It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens but it's the lowest one'... Nelson Mandela (AI,2015)

'The degree of civilization in a society can be judged by entering its prisons'. Fyodor Dostoevsky (Shapiro,2006)

5.1 Introduction

This chapter consists of the findings of the study with special attention to prison conditions, administration and independent monitoring using the Nelson Mandela Rules and the 1996, Kampala Declaration as a yardstick. The chapter gave a brief history of the United Nations Nelson Mandela Minimum Standard Rules on the Treatment of Prisoners and Kampala Declaration. In addition, the chapter presented findings based on a literature search on prison conditions under the following subheading: Physical structure, prison condition, medical care, sanitation food, bedding, and beddings vis- a vis the Nelson Mandela Rules and the Kampala Declaration. Furthermore, the chapter highlighted further findings on the aspect of independent monitoring as well as administration in relation to the Nelson Mandela Rules and the Kampala Declaration.

The role of prison in the criminal justice system cannot be underestimated. The appropriate use of imprisonment has the potentials to play a crucial role. This crucial is in upholding the rule of law by making sure that alleged offenders are brought to justice and providing a sanction for severe wrongdoing. However, at best prisons should be able to offer a humane experience with opportunities for prisoners to obtain assistance and help with rehabilitation

According to Penal Reforms International (2012), prison conditions ought not to be additional punishment. The prison sentence is the sanction; it holds an individual accountable for their actions and protects the society. It deprives someone of their liberty and impacts on certain other rights, such as freedom of movement which are inevitable consequences of imprisonment, but people in prison, retain their human rights and fundamental freedoms.

In ensuring that the rights of prisoners are safeguarded there are various international standards that contain requirements for the treatment of prisoners and detention conditions. These include

the Revised UN Standard Minimum Rules for the Treatment of Prisoners (now and known as Nelson Mandela) and the UN Convention against Torture. The UN Rules for the Treatment of Women Prisoners and Non – Custodial Measures for Women Offenders (‘the Bangkok Rules’) which supplement the Nelson Mandela Rules. The Bangkok Rules include provisions for the treatment of women prisoners which meet their specific needs. On the regional level, there is some standard such Kampala Declaration on Prison Conditions in Africa and Plan of Action on Accelerating Prison and Penal Reform in Africa.

For the purpose of this study, Nelson Mandela Rules, as well as the Kampala Declaration on Prison Conditions in Africa, will be considered as a yardstick to measure the conditions of prison in African countries.

5.1.1 United Nations Standard Minimum Rules for the Treatment of Prisoners: The Nelson Mandela Rules.

The Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of July 31 1957 and 2076 (LXII) of May 13 1977 (UN,1955).Furthermore, the United Nations Standard Minimum Rules for the Treatment of Prisoners were adopted by the United Nations General Assembly on December 17, 2015, after a five-year revision process. These rules are now known as the Nelson Mandela Rules in honour of a prisoner of conscience and former President of South Africa, late Nelson Mandela. According to Penal Reform International (2017), the revision process was initiated in 2010 when it was recognised that while the Rules were a key standard for the treatment of prisoners globally and were widely used, there had been major developments in human rights and criminal justice since 1957.Penal Reform International (2017) stated further that The Standard Minimum Rules are often regarded by states as the primary – if not only – the source of standards relating to treatment in detention, and are the key framework used by monitoring and inspection mechanisms in assessing the treatment of prisoners. These rules are generally accepted as being good principles and practice in the treatment of prisoners and prison management.

5.1.2 The Kampala Declaration

The Kampala Declaration on prison conditions originally emanated from the International Seminar on Prisoner Conditions in Africa held in Kampala, Uganda in 1966. The Declaration is annexed to UN ECOSOC Resolution 1997/36 on ‘International Cooperation for the

Improvement of Prison Conditions' and cited in the Mandate of the Special Rapporteur on Prison Conditions of Detention of the African Commission.

Between 19 -21 1996, 133 delegates from 47 countries, including 40 African countries, met in Kampala, Uganda. The President of the African Commission on Human and People's Rights, Ministers of State, Prison Commissioners, Judges and international, regional and national non-governmental organizations concerned with prison conditions all worked together to find solutions to find common solutions to the problems facing African prisons. The three days of intensive deliberations produced The Kampala Declaration on Prisons Condition in Africa which was adopted by consensus at the closure of the conference. In addition, some lines of action were highlighted.

5.1.2.1 Prison Conditions

Considering that in many Africa countries in many countries in Africa the level of overcrowding in prisons is inhuman, there is lack of hygiene, insufficient, or poor food, difficult access to medical care, a lack of physical activities or education, as well as inability to maintain family ties.

Bearing in mind that any person who is denied freedom has a right to human dignity,

Bearing in mind that the universal norms on human rights place an absolute prohibition on torture of any description.

Bearing in mind that some groups of prisoners, including juveniles, women, the old, the mentally and physically ill, are especially vulnerable and require particular attention,

Bearing in mind that juvenile must be separated from adult prisoners and that they must be treated in a manner appropriate to their age,

Remembering the importance of proper treatment for female detainees and the need o recognise their special needs,

The participants at the International Seminar on Prison Conditions in Africa held in Kampala from 19 to 21 September 1996 recommended:

1that the human rights of prisoners should be safeguarded at all times and those non-governmental agencies should have a special role in this respect, that is recognised and supported by the authorities,

2.that prisoners should retain all rights which are not expressly taken away by the fact of their detention,

3. that prisoners should have living conditions which are comparable with human dignity

4. that conditions in which prisoners are held and the prison regulation should not aggravate the suffering already caused by the loss of liberty,
5. that the detrimental effects of imprisonment should be minimised so that prisoners do not lose their self-respect and sense of personal responsibility.
6. that prisoners should be given the opportunity to maintain and develop links with their families and the outside world, and in particular be allowed access to lawyers and accredited paralegals, doctors and religious visitors,
7. that prisoners should be given access to education and skills training in order to make it easier for them to reintegrate into society after their release
8. that special attention should be paid to vulnerable prisoners and that nongovernmental organisations should be supported in their work with these prisoners
9. that all the norms of the United Nations and the African Charter on Human and Human People's Rights on the treatment of prisoners should be incorporated into legislation in order to protect the human rights of prisoners.

5.2 Findings

In this section, the findings of a review of literature in relation to physical structure, prison conditions, overcrowding, medical care, separation of categories, sanitation, food and water, sanitation, beds, and beddings will be highlighted. Other findings that will be presented in this section include administration and independent monitoring.

5.2.1 Physical Structure of prisons

'we shape our buildings and afterward our buildings shape us' (Winston Churchill ,1943).

Living conditions in a prison are among the main factors determining a prisoner's self-esteem and dignity. Prisoners who experience humane conditions will be more willing and able to respond to rehabilitative programmes (Prison Reform International, 2012). Those that experience punitive detention conditions and mistreatment, on the other hand, are likely to return to society psychologically shattered and in poor or worse state of physical and mental health than when they entered. Humane prison conditions reduce the prevalence of violence in prisons. It, therefore, behooves on countries to ensuring those in detention and incarceration are treated humanely in environments that are safe and secure. This will go a long way to ensure the realisation of the objective of imprisonment which is to rehabilitate and reintegrate offenders.

Physical conditions of prisons have been at the center of long-standing debates in correctional policy and research. Many argue that prisons should be unpleasant to deter future offending and motivate prosaically change among inmates. Physical conditions of prisons have been at the center of long-standing debates in correctional policy and research. Many argue that prisons should be unpleasant to deter future offending and motivate prosaically change among inmates. Others believe harsh conditions inhibit effective treatment, and, perhaps, make offenders worse (Bierie, 2011). There have also been various theoretical standpoints on prison conditions. There is a striking consistency between these accounts and criminological theory. Indeed, diverse frameworks for thinking about crime explicitly or implicitly suggest that harsh prison conditions may harm inmates and lead to misconduct or criminogenic deficits. Strain theorists argue that poor prison conditions may lead to emotional duress, with misconduct, operating as a way to alleviate that duress (Agnew, 1992,1999,2001; Sherman, 1993). Routine activities theorists have suggested that misconduct increases in the presence of poor conditions reduced guardianship. The risk of being caught likely decreases in loud and cluttered prisons because staff will have a harder time observing misbehaviour or catching offenders (Clarke & Felson, 1993; Wortley, 2002). Rational choice theorists argue that declining prison conditions may change the cost-benefit calculus of inmates, creating motivation toward disorder such that they have little to lose and much to gain by misconduct. For example, inmates might see misconduct as an instrumental tool by which to raise the quality of life – to send a message to staff or the public (Boswirth & Caaabine, 2001; Morris, 1988; Useem & Goldstone, 2002, Useem & Phiel, 2006; Useem & Resig,1999).

Social disorganisation advocates suggest that prisons that are most overcrowded and chaotic may have the most difficulty in regulating the norms and behaviour of their population and allow misconduct to flourish (Steiner, 2009). Sub cultural theorists may suggest that harsh conditions lead inmates to see staff or regimes as unjust and, as a result, create or solidify anti-social subcultures (Skyes, 1958; Wolfgang & Ferracuti, 1982) or prisons lose legitimacy (Bottoms, 1999); Frankie, Bierie & Mackenzie, 2010). Social control theorists suggest that prison conditions either help or hinder the formation of social bonds among inmates and thus propensity toward misconduct or recidivism (Rocque, Bierie & MacKenzie, 2010). Across theoretical paradigm, then, declining physical prison condition is seen as a key process by which criminality increases.

5.2.2 Physical conditions of prisons: Various aspects of prison environments can impact residents, including social dynamics, managerial policy or structures, and compositional aspects of themselves (Arrigo & Milovanovic, 2008). However, this study is considering the physical structure or environment of prisons in Africa countries in relation to international standard using the Nelson Mandela Rules and the Kampala Declaration, while the buildings in this study focus specifically on the physical building where prisoners are locked up.

According to Rule 1 of the Nelson Mandela Rules which states that:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times. Treating prisoners with dignity will include providing decent accommodation for prisoners.

Likewise, Nelson Mandela Rule 12-14 stipulates specifically the type of accommodation that prison inmates are entitled to

Nelson Mandela Rule 12 states that

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.¹
2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison

Nelson Mandela Rule 13 states that:

All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lightning, heating, and ventilation.

Nelson Mandela Rule 14

In all places where prisoners are required to live or work

(a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficiently for the prisoners to read or work without an injury to eyesight (UNDOC, Nelson Mandela Rules, 2015:2,12-14)

In addition, according to recommendations 3 & 4 of the Kampala Declaration on Prison conditions of Africa

3. That prisoners should have living conditions which are compatible with human dignity,

4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by the loss of liberty (ACHPR, 1995:1)

However, the physical conditions of most prisons in Africa do not meet international standards. For instance, most of the buildings housing prison inmates were inherited from colonial masters and there has not been any effort to renovate them to meet up to international standards. According to Dissel (2001), most infrastructures in Africa prisons were inherited from the colonial masters and these infrastructures have remained unaltered. Likewise, Sarkin (2008) observed that the African prisons generally suffer from very poor and dilapidated constructions.

A review of the literature by this study further revealed that the situation of dilapidated buildings still subsists in most African prisons. For instance, the Uganda Human Rights Commission 2015 report indicated that 55 out of the 73 prisons in Uganda were unsuitable for human habitation. This is due to the dilapidated nature of the buildings in the prison. The physical structure of prisons in Uganda did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners. In Nigeria, Ayade (2010) observed from his participation in a nationwide inspection of prisons in Nigeria conducted by Constitutional Rights Project in collaboration with National Human Rights Commission that most of the prisons in Nigeria were inherited from colonial masters, the infrastructures are old and in bad shape. According to NHRC majority of the prisons were built by the colonial administration and Native authorities predating the country's independence (NHRC: 2008:1). For instance, the convict's prison in Kaduna was built in 1915, Shendam prison in 1933, Enugu prisons, 1924; Agodi prison in Ibadan in 1895, Calabar prisons 1918 and Port Harcourt prisons in 1918 (Ayade:2010:27-34). Though Ayade claimed that some new prisons have been built in Nigeria for example prisons in Ogwashukwu, Oyo, Medium Security prison in Okene and Eket was built in 2007) Suleja prisons (1987), Makurdi (2001)

and Funtua 2003(Ayade,2010:27-34). He, however, stated that the quality of the newly constructed prison buildings calls for questioning with respect to the quality of the materials used. He is of the opinion that the materials used for the construction were substandard (Ayade 2010:27). Likewise, Odeh (2015) in a study conducted to evaluate the influence of architectural character on inmates in the design of prisons in Nigeria concluded that Nigeria prisons are in a horrible state. The physical structure of prisons in Nigeria did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment.

Furthermore, AI report of 2012 indicated that most prisons in Chad were built during the French colonial period and most of the prisons have not been repaired or refurbished for many years. AI further described prison buildings in Chad as old, dilapidated, neglected and overcrowded. During a visit by the AI team to some prisons in Chad the following statements describe some of the prisons *'leaks were visible in the roofs, walls are crumbling in several prisons posing danger and serious safety risks for inmates, prison staff and visitors* (AI report, 2012:18). The physical structure of prisons in Chad did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment

The situation with regards to the physical structure of prisons in Senegal is not different as most of the buildings dated back to the colonial administration. According to the 2017 annual report of Prison Insider, the prison in St. Louis and at Reubess (the largest prison located in Dakar) were built in 1929. It was reported that most prisons buildings in Senegal were dilapidated. The physical structure of prisons in Senegal did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment

In Kenya, Ondieki (2017) states that most of the prison buildings were built during the colonial era. For instance, the Nairobi Remand and Allocation prison was built in 1911, Isiolo Prison was built in 1947 when Kenya was under a governor called Sir Phillip Mitchel and Shimo La Tema prisons was built in 1953. Mnyamweze, Giesa & Sang (2015) indicated that majority of the prisons in Kenya including Kodianga which was built in 1932 were built during colonial era and added that nothing has been done to improve most of the prisons since then. This

implies that the infrastructure which was in place during the colonial era which was meant to accommodate a few people is still what is in use when the prison population has increased. Without any doubt, the conditions of the facilities would have deteriorated and become dilapidated. Locking up prisoners in these types of prison facilities amounts to inhumane treatment, cruelty and an infringement of the fundamental human rights of such prisoners. One can confidently say that rehabilitation and reformation cannot take place in this type of prison structure.

The physical structure in most prisons in Cote D'Ivoire is similar. Most of the prison buildings were built during the colonial era and has not been renovated to meet the modern-day standard. This fact was corroborated by the Ivorian Prison Service Director Coulibaly, who stated that most of the current facilities in Cote D'Ivoire prisons dates back from the colonial period. He went further to say that *'most of the prisons were never meant to be prisons and have been poorly adopted for the purpose'* (Coulibaly, 2014 in ICRC interview). The physical structure of prisons in Cote D'Ivoire did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment

Most of the prison facilities in Somalia were also built during the colonial administration. For example, Mogadishu prisons were constructed in 1910 by the Italian government (Corrections Update, 2011). In addition, Correction Update noted that the prison facilities in Somalia are in a state of disrepair and need significant and urgent improvement to bring the facilities up to minimal standards. The physical structure of prisons in Somalia did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment

Furthermore, most of the 12 prisons in Togo are dilapidated (IRN News, 2012). The physical structure of prisons in Togo did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment. On the other hand, Yusuf (2016) revealed that that almost all the prison in Zanzibar were built during the colonial era and these prisons need urgent repairs due to their dilapidated state. The physical structure of prisons in Tanzania did not meet the minimum requirements of the Nelson Mandela Rules and

the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment.

In Zambia, many of the buildings stemming back from colonial times hence did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration. It amounts to inhumane and degrading treatment (Ubumi Prisons Initiative, n.d)

As regards Zimbabwe, most prisons were also built during the colonial era and are still far from meeting international standards in relation to the physical structure of prison buildings, the prisons in Zimbabwe remain more of places to punish offenders as opposed to rehabilitation institutions. This, the Zimbabwe Prisons and Correctional Services Commissioner, Paradazi Zimondi in an interview admitted with the state media that *'the majority of the country's 43 prisons were outdated and lacked basic amenities'*. He went further to say that. *'“One of the major problems we have is that most of our big prisons, like Harare Central and Masvingo, were built a very long time ago,” ‘they were built without proper ventilation and do not have adequate washrooms’* (Zimbabwe News, 2016). The physical structure of prisons in Zimbabwe did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration regarding preserving the human dignity of prisoners and could be regarded as torture, inhumane and degrading treatment

However, in Swaziland, prison facilities were said to be of mixed quality. According to the U.S Human Rights report of 2015, some of the buildings of the prison are old and dilapidated others such as the women prisons are new and well maintained.

From literature search, it could be concluded that most prisons buildings nay physical structures were inherited from the colonial masters, have not been renovated since hence they are in a state of dilapidation. Accommodating prisoners in such physical condition of prisons reduce human dignity and dehumanizes them this is against the Nelson Mandela rules and the Kampala Declaration and a negation of United Nations Universal Declaration of Fundamental Human Rights amongst other international treaties. This review also indicated that some of the buildings were actually designed to serve as punishments center. In view of the current trend of using imprisonment as a form of rehabilitation and reintegration, such buildings negate the philosophy of rehabilitation. The state of these prisons also indicates the state of neglect the relevant authorities have subjected the prison arm of the penal system to. Can we, therefore, conclude that the state of our prisons in Africa suggest the state of Africa's development as espoused by Fyodor Dostoevsky that; *the degree of civilisation in a society can be judged by*

entering its prisons' '. Can the state of our prisons be said to be responsible for the rate of recidivism in Africa?

5.2.3 Prison conditions

Prison conditions can be described as the prevailing living conditions of the prisoners within any building designated as a prison.

According to Rule 1 of the Nelson Mandela Rules states that: All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Resolution 3 and 4 of the Kampala Declaration states that

3. That prisoner should have living conditions which are compatible with human dignity,
4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by loss of liberty (ACHPR,1995:1).

Treating prisoners with respect to dignity should include providing a decent and clean prison environment. However, this is not the case in most prisons in African countries. The poor and unhealthy prison condition has been in existence over a period of time for instance the African Commission on Human and People's Rights (ACHPR) noted

'that the conditions of prisons and prisoners in many Africa countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions, inadequate recreational, vocational and rehabilitation programme, restricted contact with the outside world, large percentages of persons awaiting trial, among others (ACHPR,1995a).

The commission also observed

'that prison conditions in many African countries do not conform with the articles of the African Charter on Human Rights and People's Rights and to the international norms and standards for the protection of the human rights of prisoners including International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others' (ACHPR,1995b).

In fact, these deplorable conditions in Africa were what led to the Kampala declaration, however, nothing seems to have changed regarding the prison conditions in most African countries after almost 22 years after the declaration. A review of the literature revealed that prisons in most African countries are still poor and ridden with many inadequacies. For instance, AI in its 2017 report described prisons condition in Gabon as '*dangerously subhuman*' as prisoners are frequently denied access to decent food, basic sanitation, legal counsel, family members and appropriate medical care (AI, 2017). This type of treatment of prisoners amounted to degrading and inhumane treatment and is not compatible with human dignity. It does not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration. In addition, it aggravates the suffering of prisoners.

In 2015, a human rights organisation, Freedom House, described prison conditions in Gabon prisons as being harsh and severely overcrowded. In addition, Freedom House (2015), The U.S Department report of 2015 described prison condition in Gabon as harsh and potentially life-threatening due to lack and or low quality of food, inadequate sanitation, lack of ventilation, gross overcrowding and poor medical care. The prison condition in Gabon is cruel, inhuman and degrading treatment and violation of the fundamental human rights of prisoners.

In Mali, the prison condition remained poor. This was confirmed by AI in April 2017 during an interview with inmates of Bamako Central Prisons that prisons condition has not changed since AI's last visit 2013 and 2014 to the prison. The poor prison condition in Mali did not meet international standards, neither is it in compliance with the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration.

In the Benin Republic, after making a surprise visit to some prisons and detention centers, the United Nations Subcommittee on the Prevention of Torture (SPT) said Benin had made some progress since its previous visit in 2008 but warned that prison conditions in the Benin Republic remained dire. UN experts raised an alarm at disturbing and cramped conditions in Benin detention facilities, including poor access to water and food, and urged the West African country to immediately reduce overcrowding (OHCHR, United Nations Human Rights, 2016). The head of the delegation, Borloz voiced particular alarm over conditions in Abomey prison, which he described as '*inhumane and shocking*'. The dire condition of prison conditions shows that prison conditions in the Benin Republic do not comply with Mandela Rules as well as the Kampala Declaration.

In Angola, the prison conditions remained poor with local and media highlighting corruption, overcrowding, and violence as major challenges (Human Rights Watch, 2017). This amounts to cruel inhuman and degrading treatment. The poor prison condition in Angola negates the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration.

Furthermore, the prison conditions in Malawi have been described in various ways. For instance, Mweninguwe (2016) described prison conditions in Malawi '*as atrocious*'. In 2007, the constitutional court in a case *Masango vs A.G & others* ruled that the current prison conditions in Malawi amount to torture and degrading treatment. Despite this ruling, Kenan & Manda (2014) report that the prison conditions in Malawi are worsening. In a report issued in 2011 by Open Society Initiative for Southern Africa in collaboration with the Centre for Human Rights Education, Advice, and Assistance (CHEAA), it was concluded that '*the overwhelming picture is that conditions of detention are poor and fall short of what is generally accepted as humane detention*'. The prison condition in Malawi is cruel, inhuman and degrading treatment and violation of the fundamental human rights of prisoners. Hence it did not meet the minimum requirement of both the Nelson Mandela Rules and the Kampala Declaration.

The prison condition in Democratic Republic of Congo (DRC) leaves much to be desired. According to a lawyer who is also senior manager of Association of Prison Friends (Association des Amis de la Prison), an NGO that defends the rights of prisoners in Kinshasa, prison conditions in DRC is characterised by *unkempt building, overcrowded and unsanitary cells, detainees deprived of food and all medical treatment.....*' (International Press Service, IPS, 2010). On another platform, Avocats Sans frontières (ASF), an international NGO, active in the human rights and development sector described the prison conditions in DRC as '*....overpopulation, poor hygiene, no health care, little food.....the situation of detainees in DRC is very concerning*' (ASF, 2015). The prison condition in DRC can be regarded as inhumane and degrading treatment, cruel and constitute an abuse of human rights of the prisoners. The prison condition in DRC did not meet the minimum requirement of the Nelson Mandela Rules and the Kampala Declaration.

In a Human Rights Watch, world report of 2015, there was an account of prisoners in Eritrea being held in vastly overcrowded and underground cells or a shipping container with no space

to lie down, little or no light, oppressive cold or heat and vermin. This condition in detention is an inhumane and gross abuse of human rights of prisoners (HRW, 2015).

Gordin & Cloete (2013) described prison conditions in South Africa as being horrifying. They noted that those prison conditions are unhygienic for many reasons which include an insufficient number of bathrooms and inadequate supplies of toilet paper and soap. Equally Agboola (2016) states that the inadequate conditions of South Africa's correction facilities are well known. Agboola listed some of the inadequacies in the correctional facilities of South Africa to include inadequate health care, sanitation, food provision, access to education and reading materials and in particular overcrowding. From the judicial point of view, the appalling condition of detention centers in South Africa was described extensively in a report by constitutional court Justice Edwin Cameron following his visit to Pollsmoor remand as *'deplorable, 'profoundly disturbing' and vulnerable to constitutional challenge'*. The prison condition in South Africa is cruel, inhuman and degrading treatment and violation of the fundamental human rights of prisoners. Hence it did not meet the minimum requirement of both the Nelson Mandela Rules and the Kampala Declaration.

In Somalia, the prison condition was described by Corrections Update (2016) as being deplorably characterised by inadequate infrastructure, little management capacity, insufficient water food, and medicine. This indicates that the prison condition in Somalia did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration.

In Swaziland, the 2015 U.S report on human rights submitted that prison conditions in Swaziland were harsh and life-threatening due to food shortages, gross overcrowding, physical abuse, inadequate sanitary condition and medical care. A businessman who was detained in Sidwashini, one of the prisons in Swaziland described the prison condition as *'hell holes' not fit for human occupation* (Magagula, 2014). The inhumane condition in Swaziland prisons has led to the UN raising a team to conduct an investigation on prison conditions in Swaziland. The prison condition in Swaziland is cruel, inhuman and degrading treatment and violation of the fundamental human rights of prisoners. Hence it did not meet the minimum requirement of both the Nelson Mandela Rules and the Kampala Declaration.

In August 2015, a report released commenting on events of 2014 by Freedom House states that: *'Prisons in Cameroon are overcrowded and conditions are sometimes life-threatening. torture and abuse of detainees are widespread.'* (Freedom House (18 August 2015) Freedom in the World 2015 – Cameroon.) Likewise, in September 2015 Amnesty International points

out in a report that: *'Amnesty International has documented poor detention conditions in Maroua Prison including chronic overcrowding, inadequate food, lack of drinking water, limited medical care, and deplorable hygiene and sanitation.'* (Amnesty International, 23 September 2015). A report issued in October 2015 by Amnesty International includes noting: "...inhumane detention conditions in overcrowded prisons..." (Amnesty International 30 October 2015). The prison condition in Cameroon can be summarised as being cruel, inhuman and degrading treatment and violation of the fundamental human rights of prisoners. Hence it did not meet the minimum requirement of both the Nelson Mandela Rules and the Kampala Declaration.

According to a 2015 report on by Human Right Watch (HRW) in Sierra Leone, conditions remain below minimum international standards because of overcrowding, poor hygiene and a lack of medical attention. In 2017, European External Action Service (EEAS) (2017) reports that prison conditions are harsh and life-threatening due to lack of food and access to medical care, gross overcrowding and terrible sanitary conditions in most prisons in Sierra Leone. The prison condition in Sierra Leone did not meet the minimum requirement of the Nelson Mandela Rules and the Kampala Declaration. The prison condition in Sierra Leone is an infringement on the human rights of the prisoners; it also amounts to cruel, degrading and inhumane treatment as well as not being in line with upholding human dignity.

From the findings on prison conditions of some African countries, it is evident that prison conditions in African countries remained poor, amounts to torture, degrading and inhumane treatment. This is unacceptable. One curious thing is that the poor conditions in these prisons are not a new phenomenon but nothing tangible seems to have been done by the various authorities. The consequences of having such prison conditions are enormous. For example, it is practically impossible for any form of rehabilitation to take place in this kind of poor prison condition. This implies that the philosophy of imprisonment for rehabilitation and corrections is not correct regarding prisons in African countries. In addition, the cost implication of having prisoners who are not rehabilitated is enormous. For instance, when such prisoner is released into the society without acquiring necessary skills that could assist him reintegrating into the society, the tendency is for such prisoner to go back into the world of crime, thereby putting additional pressure on the overstretched facilities of the prisons and increasing the rate of recidivism. It needs to be mentioned that these prisoners are maintained (though poorly) from the resources of the government. In view of the dwindling resources of most countries in Africa and in the world generally, it affects the resources allocation to prisons of most countries.

It has, therefore, become imperative for African countries to make sure that prison conditions are humane, conducive for rehabilitation purposes that are in tune with regional and international standards as the way prisoners are treated is crucial to the establishment of fair and effective criminal justice systems.

5.2.4 Prison overcrowding

Prison overcrowding is a worldwide phenomenon. Prison overcrowding and the resulting financial and human rights problems related to overcrowding remain one of the paramount concerns and have been expressed by developed and developing countries (Singh, 2009). According to UNDOC (2016:21), prison overcrowding continues to be labeled the '*priority challenge for prison administrations around the world*' and '*one of the major challenges in the administration of justice*' (UN Human Rights Council, 2015). This has prompted the UN General Assembly to reiterate the importance of measures to reduce overcrowding and pre-trial detention in its 2016 resolution on human rights in the administration of justice (UN, 2016). Prison overcrowding in East, Central and West Africa, Central America and South Asia is particularly severe (UNDOC, 2016:21).

There has not been a universally acceptable definition of overcrowding. Griffiths & Murdoch (2009) defined prison overcrowding as a situation in which the numbers of persons confined in a prison are greater than the capacity of the persons to provide adequately the physical and psychological needs of the confined persons. In another parlance, Harney (2005:35) at the second hearing of Commission of Safety and Abuse in America's Prisons held in Newark, New Jersey, posit that overcrowding could mean housing more prisoners in environments that do not have the infrastructure to manage them properly. Housing more prisoners in environments that do not have adequate programming resources, housing more prisoners in environments that do not have medical and mental health care that is commensurate with the number of people who are confined (Harney, 2005:35).

From these two definitions, the researcher attempted to describe prison overcrowding as 'a condition in which a designated building for prison is accommodating more prisoners than the stipulated capacity which it was designed to accommodate, as well as lack of necessary resources that are adequate for the population of prison inmates with a purpose for the effective rehabilitation of prisoners at any given time'. These resources are those are needful for the physical, psychological, mental and social well-being of the prisoners.

Though overcrowding is a global phenomenon, the situation in Africa is of great concern. For instance, prison overcrowding in three of the five regions of Africa namely East, Central, and West Africa was described by UNDOC (2016:21) as being particularly severe among the five regions of the world. Other regions of the world where prison overcrowding is of concern are Central America and South Asia

Overcrowding in Africa prisons has its origin in the colonial era (Dissel, 2001; Sarkin, 2008) In 2008, Sarkin described overcrowding as the most pressing concern facing African nations. The situation seems not to be different even now. Most of the prisons in Africa are characterised by overcrowding. However, the degree of overcrowding differs from one country to the other as well as one prison to the other in different countries

Nelson Mandela Rule 1 which states that:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times (UNODC Nelson Mandela Rules, 2015:2).

Nelson Mandela Rule 12 which states that:

1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room (UNODC Nelson Mandela Rules, 2015:12).

Kampala Declaration

Resolution 3, 4 and 5 of the Kampala Declaration states that

3. That prisoner should have living conditions which are compatible with human dignity,
4. That conditions in which prisoners are held and the prison regulations should not aggravate the suffering already caused by loss of liberty.
5. That the detrimental effects of imprisonment should be minimised so that prisoners do not lose their self-respect and sense of personal responsibility (ACHPR, 1995:1).

A summary of the overcrowding nature of some prison in Africa are highlighted below:

In South Africa, as at March 2016, there were 169,984 inmates in correctional facilities with a capacity of 119,134. A breakdown of prisoners in different facilities shows that Polls moor prisons in Western Cape region of South Africa were overcrowded by 251%, Malmesbury (old) also in Western Cape, Johannesburg Medium B Gauteng was overcrowded by 233%; Lusikisiki in the Eastern Cape was overcrowded by 193%(Judicial Inspectorate for Correction Services (JICS) Annual Report for 2015/2016:40). Furthermore, it was reported that Pollsmoor prison was operating at around 249% capacity accommodating 4032 detainees. This is more than 2413 detainees more than the number for which it is approved. Without mincing words, the overcrowding nature of prisons in South Africa does not meet international standards. The level of overcrowding will lead to overstretching the resources of the various prison facilities and it could engender violence and outbreak of communicable diseases

The overcrowding nature of prisons in Senegal prisons is described as '*being endemic*' by the U.S Human Rights report of 2016. For instance, Dakar's main prison facility that has a capacity to hold 800 had about 2,500 prison inmates (VOA, 2016 citing the independent National Prisons Observatory). The total prison population of prisoners in Senegal as October 2016 was 9,422 as against the official capacity of 7 360 indicating an occupancy level of 119.3%. The overcrowding in Senegalese prisons does not meet the minimum requirement, the Nelson Mandela Rule as well as the Kampala Declaration.

Overcrowding is also prevalent in Zimbabwean prisons, especially in the urban centers. As at May 1, 2017, there were 19 521 prison inmates against the official capacity of 17,000. The Zimbabwe Prisons and Correctional Services acknowledged the overcrowding situation and described the situation as being overwhelming by the prisoner's population which has exceeded the holding capacity by 12% (News Zimbabwe, 2015). In May 2016, the President of Zimbabwe, Robert Mugabe had to pardon over 2 000 prisoners in all prison in Zimbabwe in a bid to decongest the prisons and ensure better living conditions. In December 2015, Zimbabwe Human Rights Commission's report also noted the overcrowding nature of prisons in Zimbabwe thus: '*The [Chikurubi] prison has a holding capacity of 1,360 prisoners and at the time of ZHRC's visit, the prison had 2,270 inmates, making it 69.9 percent overcrowded*' (AA News Broadcasting System (HAS) (2016). The overcrowding nature in prisons in Zimbabwe is inhumane, amounts to torture and an infringement on the fundamental human rights of the

prisoners. In essence, the prisons in Zimbabwe did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration

According to International Committee of the Red Cross, overcrowding is a major concern in prison in Cote d'Ivoire. The HRW (2017) states that most prisons in Cote d'Ivoire are overcrowded. As at November 30, 2016, the total prison population in Cote d'Ivoire was 11,192 as against the official capacity of 4 871 indicating an occupancy level of 281%. Specifically, at the Maison d'Arret et de Correction, Abidjan (Ivorian capital), a team of the Amnesty International (AI) was informed by prison officials in March 2017 that the prison has the capacity to hold 1 500 detainees but held 3 694 prisoners (AI,2017). The overcrowding situation of prisons in Cote d'Ivoire did not meet international standards and violates the Nelson Mandela Rule, as well as the Kampala Declaration as human dignity of prisoners, is not taken into consideration. In addition, the overcrowding in these prisons aggravates the suffering already caused by the loss of liberty.

In Ghana, a UN Special Rapporteur Mendez in 2015 described overcrowding in Ghana prisons as alarming. The media reported in mid-2016 that 28 out of the country's 43 prison facilities in Ghana were overcrowded by as much as 358 percent (Citifmonline,2016) According to the acting Director General of the Ghana Prison Service, Mr. Emmanuel Adzator, the Ghana Prisons at October 2016 Ghana prisons are overcrowded by 3,810 prisoners. Although the 43 prisons in the country are to hold a total of 9,875 prisoners, as at July 2017 the prisons were holding 13 293 (prison studies). This shows that the overcrowding situation in Ghana is not abating. Overcrowding being experienced in Ghana's prisons dehumanises the prisoners and it amounts to cruel treatment and an infringement on the human rights of the prisoners

In Togo, prisons are overcrowded holding more than twice its designed capacity. According to prison studies, the total prison population as at 2015 was 4 427 as against a capacity of 2 720. The President of Togolese Human Rights League described the overcrowding in Togo's prisons as alarming (IRIN,2012). The overcrowding nature in prisons in Togo is inhumane, amounts to torture and an infringement on the fundamental human rights of the prisoners. In essence, the prisons in Zimbabwe did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration

The prisons in Tanzania are also overcrowded. Amnesty International (2012) quoted the Legal and Human Rights Centre, a local NGO as saying that overcrowding is one of the major problems of Tanzania Prison Service. According to prisonstudie.org the official holding

capacity of prisons in Tanzania as at December 2015 was 29,552 while the number of prisoners stood at 31,382 representing a 6% above designed capacity. This is a case of abuse of fundamental human rights of the prisoners as well as non-compliance with the Mandela rules and the Kampala Declaration.

In Egypt, data about prisons and prisoners are lacking. To buttress this claim, Soufi (2014) indicated that activists inhuman Rights Centre for the assistance of prisoners reported a case where they became aware of the existence of a prison in Egypt only when a convict's family came to the center seeking for help. Despite the scanty information on prisons in Egypt, Sherry & White (n.d) after a visit to six prisons observed that overcrowding is a major problem in the six prisons they visited. In another study Shaker, an intern who conducted a research on Egypt prison system found that overcrowding is endemic in Egyptian prisons. A news report by nsnbc international shows that the Imbaba Public Prosecutor Alaa Samir who made a surprise visit to the prisons confirmed that there is overcrowding in Egypt prisons. The political crisis is a major reason why there is overcrowding in most prisons in Egypt. The overcrowding nature in prisons in Egypt is inhumane, amounts to torture and an infringement on the fundamental human rights of the prisoners. In essence, the prisons in Egypt did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration.

Furthermore, the prisons in the Benin Republic are also overcrowded and it is a serious problem. According to the 2015 Watch Dog on the Justice system in Benin, 9 out of 10 prisons in the Benin Republic were filled beyond capacity. In addition, the AI 2016/2017 report indicated that the prison in Cotonou held 1 137 detainees despite having a maximum capacity of 500. As at March 2014, the total prison population in Benin Republic was 7 067 against an official capacity of 2 900 this shows an occupancy level of 247%. The overcrowding nature of prisons in the Benin Republic did not meet international standards as it does not comply with the minimum requirements of the Nelson Mandela Rules as well as the Kampala Declaration.

The prisons in Uganda are overcrowded as well. The overcrowding situation of prisons in Uganda has been described in various ways. For example, the Foundation of for Human Rights Initiative (FHRI, 2015) said '*overcrowding in Uganda's prisons is alarmingly high*,' while the U.S Human Rights report 2016 that there is '*gross overcrowding in Uganda Prisons*'. VOA (2015) quoted the Commissioner of Prisons in Uganda as saying that the overcrowding in Uganda prisons is serious and that it has created a health threat. In addition, Joseph Amon, the Director of Human Rights Director of Human Rights Watch submit that that prisons in Uganda

are crammed to over 200% of installed capacity (Amon, 2011). The total prison population in Uganda as at October 2016 was 48 714 against the official capacity of 16 612. This does not meet the minimum requirements of the Mandela Rules and the Kampala declaration.

In Gabon, the prisons are overcrowded as well. According to Freedom House World Report, a human rights organization, the prisons in Gabon is severely overcrowded (FH, 2015). The prisons in Gabon was also described by US human rights report, 2016 of being grossly overcrowded. For instance, as at the end of 2015, the Libreville Central prison that was built to accommodate 500 inmates held 2 014. Prison studies citing Africa Commission for Human Rights submit that Libreville Central prison held an estimated 1 753 prisoners as at January 16, 2014. The overcrowding nature in prisons in Gabon is inhumane, amounts to torture and an infringement on the fundamental human rights of the prisoners. In short, the prisons in Gabon did not meet the minimum requirements of the Nelson Mandela Rules and the Kampala Declaration

The prisons in Morocco are also overcrowded. This was confirmed by the Minister of Justice at the interpellation in the country's House of Representatives on the phenomenon of overcrowding in Moroccan prisons. According to the minister, there were nearly 65,000 prisoners in Morocco against the official capacity of only 30 000 (Africa Criminal Justice Reform, 2016). Furthermore, Prison Abroad a U.K based NGO after visiting some prison in Morocco concluded that there was overcrowding in Moroccan prisons. Their view was expressed thus '*prison cells meant for 18 people are shared by 30 men.....*' (British Embassy, Rabat, 2015:9). The claim of overcrowding in Moroccan prisons was confirmed by the Moroccan Observatory of Prisons that some prisons in Morocco were overcrowded and failed to meet international standards. As at May 2017, prison studies citing Morocco's national prison association claims that Morocco had a total prison population of 80 000 prisoners as against the official capacity of 40 000. The overcrowding nature of prisons in Morocco did not satisfy the Nelson Mandela Rules and the Kampala Declaration.

However, there are certain countries that their total prison population did not exceed the official capacity. These countries include Algeria, Botswana, Sao Tome among others. As at December 2014, Algeria had a total population of 61,000 while the official capacity was 68,317. Nonetheless, U.S report indicated that in some prison (though not specified) there were some cases of overcrowding. This claim however could not be verified. Botswana had a total prison population of 3 960 as at December 31, 2015, as against the official capacity of 4 337. As

regards Sao Tome, the total prison population as at October 2016 was 178 while the total capacity of the prisons was 260.

It need be pointed out that some countries in Africa, took some steps to reduce the overcrowding in their prisons. These countries include Morocco, South Africa, and Zimbabwe among others. In the case of Morocco efforts were made by the government to build additional prisons. As at 2016, 26 additional prisons had been built over a 3-year period (U.S human rights report,2016). In South Africa, a Western Cape High court in December 2016 ruled that the number of inmates at Pollsmoor remand detention facility be reduced by 1505 within 6 months in a bid to reduce overcrowding at the prison. On May 23, 2016, the President of Zimbabwe, Robert Mugabe granted pardon to over 2 000 prisoners in a bid to decongest the prisons in Zimbabwe. In Nigeria, the Controller of Prisons in Charge of Planning, Research Statistics Prison Headquarters, 12 new satellite prisons have been constructed in the last 12 years. In the Benin Republic, the National Assembly adopted a law on community service which could be used to reduce overcrowding by replacing detention with a non-custodial sentence (AI,2017).

There is still a lot to be done by various governments in Africa regarding the overcrowding nature of prisons in countries of Africa. The overcrowding nature of these prisons negates the Nelson Mandela Rules and Kampala Declaration and does not meet international standards. It is an infringement on the human rights of prisoners; the treatment is inhumane, cruel, and barbaric, and does not show that Africa is in tandem with changes in philosophy of imprisonment which is geared towards rehabilitation and reintegration. Overcrowding nature of most Africa prisons suggests that we still perceive imprisonment in the light of punishment. There is no gainsaying that no meaningful rehabilitation could take place in such overcrowded prisons. The overcrowding nature of prisons also portends health challenges such as Tuberculosis, HIV/AIDS, skin infections not only to the prisoners but to the prison officials as well as the general public.

5.2.5 Medical care

Nelson Mandela Rules 24-27 which states that:

Rule 24.1: The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have

access to necessary health - care services free of charge without discrimination on the grounds of their legal status.

2. Health - care services should be organised in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.

Rule 25.1. Every prison shall have in place a health - care service tasked with evaluating, promoting, protecting and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health - needs or with health issues that hamper their rehabilitation.

2. The health - care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner

Rule 26.1. The health - care service shall prepare and maintain accurate, up to - date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access to their files upon request,

2. Medical files shall be transferred to the health - care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

Rule 27:1. All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

2. Clinical decisions may only be taken by the responsible health-care professionals and may not be overruled or ignored by non-medical prison staff."(UNODC, The Nelson Mandela Rules, 2015:7-9).

Despite the standard set by the Nelson Mandela Rules regarding prisoners' access to medical care, most prisons in countries in Africa do not abide by these minimum requirements. Some of such cases will be highlighted below.

Review of literature shows that medical care in prisons in Tanzania is inadequate. This was confirmed by a UNODC team that conducted an assessment in 12 prisons from 5 zones in Tanzania. The report of the assessments disclosed that 75% of the assessed prison facilities did not have adequately trained medical personnel and most of the facilities are poorly equipped. With this kind of situation where there are no qualified personnel and inadequate facilities, there cannot be any quality medical care for prisoners. This is unacceptable and a violation of the human rights of prisoners. In addition, the U.S Human Reports 2016 listed common health problems among prisoners in Tanzania to include malaria, TB, HIV/AIDS and diseases related to poor sanitation. The report further stated that Tanzania prisoners were offered only limited treatment with friends and family members having to provide medication or funds to purchase them. What happens to prisoners who do not have friends or those that family members are not visiting? Lack of adequate medical care in prisons in Tanzania amounts to torture and constitute an infringement on the fundamental human rights of prisoners in Tanzania.

In Uganda prisons, Human Rights Watch (2011) submit that medical care is uneven and practically nonexistent at many of the over 170 formerly locally administered prisons countrywide. Healthcare needs of prisoners are routinely assessed by medically unqualified wardens and officers who frequently deny prisoners access to what community-based healthcare facilities are available. VOA (2015) reported that there were only 5 medical doctors in the entire Uganda Prison Service. One wonders how 5 medical doctors will function across the 249 prison establishments in Uganda with a prison population of 48 714? In addition, the U.S report on human rights of 2016 indicated that the UHRC team found out during an inspection of 106 out of the 249 prisons in Uganda that prisons in Koboko and Nebbi Districts did not have health centers. This is cruel, an inhumane and degrading treatment of prisoners which does not meet the minimum requirements of the Nelson Mandela Rules.

In Chad, AI (2012) report revealed that prisoners have very limited access to medical and healthcare. In some prisons, rooms had been allocated as clinics but they were mostly empty or used as cells. None of the prisons had a medical doctor and in some cases, prisoners who claimed to have some medical skills were requested by prison staff to provide assistance and treatment to other inmates. In Abéché Central Prison, for example, a Cameroonian detainee sentenced to two year's imprisonment for practicing medicine illegally was acting as a nurse and treating other detainees in the prison. This is a threat to human life when unqualified personnel is attending to the medical needs of other persons. This is inhumane, cruel treatment,

torture and an infringement on the human rights of prisoners in Chad. This is also a negation of the minimum requirements as stipulated by the Nelson Mandela Rules 24-27.

The medical care situation in Ghana is best described as inadequate or nonexistent. According to the Chairman of the Ghana Prison Service Commission, Rev Dr. Stephen Yenuson Wengam, Ghana Prison Service has no medical doctor in the service neither does it have a single hospital (Ghana Web, General News of Saturday 26 June, 2016). This assertion was confirmed by the U.S human reports of 2016 which indicated that medical assistants and not medical doctors provide medical services in prisons in Ghana. The report further revealed that the medical assistants are overstretched and lacked basic equipment and medicine. It was also observed that there was no dental care. All these does not meet international standards and a violation of the Nelson Mandela Rule on medical care.

The case of Gabon prisons is not different. The prisons in Gabon are characterised by inadequate medical care. The U.S human rights report of 2016 indicated that there were onsite nurses in prisons to provide basic medical care however, the prison clinics lack medications. In cases of serious illnesses or injuries to prisoners, such prisoners are referred to public hospitals. This does not meet international standards.

In Sierra Leone, an SLHRC report in 2015 shows that prisoners in Sierra Leone do not have access to medical attention. This was confirmed by a news report by European External Action Service (2017) that prisoners in Sierra Leone do not have access to medical care. This does not meet international standard.

As regards Swaziland, lack of access is one of the major reasons why the UN raised a team to investigate the inhumane conditions in Swaziland prisons. The UN team is expected to conduct the investigation in July 2017 (Swazi Observer, 2017).

The medical care for prisoners in Morocco is said to be inadequate hence does not meet international standards. A team from an NGO, Prisons Abroad disclosed that prison doctors may prescribe medicines but detainees often do not have money pay for the prescriptions (Prisoners Abroad, 2015). Likewise, the U.S report of 2016 quoted local NGOs saying that prison facilities did provide adequate access to health care. According to DGQPR 2015 statistics, there was 1 medical doctor to every 675 inmates and 1 nurse or every 135 detainees.

Despite the various legislation such as Egypt's Prison Acts of 1956 and Interior Ministry Decree 1979 that mandates the government to provide medical care for prison inmates in Egypt, access

to medical care by prisoners is inadequate. This fact was highlighted in the 2014 report of health care in prisons and detention facilities by the Egyptian Initiative for Personal Rights (EIPR) that Egyptian prisons did not meet minimum requirement of the right to health guaranteed by law, though the report noted that the quality of health care varied by location (HRW, 2015). Shaker (2015) noted that there is a lack of healthcare professionals and proper facilities to treat sick prisoners and infrastructure (Shaker, 2015). More worrisome regarding access to health care of prisoners in Egypt is a finding by HRW (2016) that prison authorities do interfere regularly in the medical treatment of prisoners. According to the report, some of the interferences include arbitrary denial of Medicare and delay or refusal of outside medicare which constitute cruel and inhumane treatment of prisoners. It is also a violation of Egypt's constitution.

The inadequate medical care in Nigeria prisons drew the attention of the country's upper legislature. The House of Representatives adopted a motion urging the Federal Government to provide quality medical and health care services for prison inmates across the country. In moving the motion, Hon Okafor raised the issue of non-availability of drugs and inadequate medical facilities in the prisons had resulted in avoidable deaths (Vanguardnews, 2017). In like manner the U. S human rights report 2016 listed chronic shortage of medical supplies, inadequate medical treatment, and inadequate medical personnel as some of the problems confronting access to medical care in Nigeria prisons (U. S human rights report, 2016:7). This is cruel, inhumane treatment and a form of torture. The medical care situation in prisons in Nigeria does not meet international standards as specified by the Nelson Mandela Rules.

The U.S report on Human Rights 2016 report that the medical care in prisons in Equatorial Guinea was inadequate. In the Democratic Republic of Congo, Avocats Sans Frontiers (2015) submit that there is no health care for prisoners in DRC, while the U.S report on Human Rights describes the medicare in DRC as being inadequate.

From the data obtained from the literature, most prisons in Africa do not offer adequate medical care to prisoners. Again, this does not comply with the Nelson Mandela Rules and did not meet international standards. Do we need to ask again for African countries what is the philosophy underlining imprisonment in the African context? This question has become needful in view of the fact that prisoners who are sick do not have access to medical care. Were these prisoners sentenced to go and die in the prisons? This is not only an infringement on their human rights it is also an infringement on the right to life because if a person is denied medical

care when needed, the person is expected to die. This is cruel treatment and amounts to torture. Lack of medical care in overcrowded prisons increase the chances of other prison contacting communicable diseases which could affect the prison officials, their families, visitors and the generality of the society. For instance, if a prisoner living with HIV/AIDS or TB is released into the community, the chance of spreading these diseases among the general population is very high. Inadequate medical care posits danger not only to the prison population but to the general public.

5.2.6 Separation of categories

Nelson Mandela Rule 11 which states that:

The different categories of prisoners shall be kept in separate institutions or parts of institutions or part of the institution taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment thus:

- a) men and women shall so far be detained in separate institutions; in an institution which receives both men and women, the whole premises allocated to women shall be entirely separate men and women shall so far be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate
- b) Untried person shall; I be kept separately from convicted prisoners.
- c) Persons imprisoned for debt and other civil matters shall be kept away from persons imprisoned by a reason of criminal offense
- d) Young prisoners shall be kept from adults (UNODC Nelson Mandela Rules,2015:5).

Regarding complying with Nelson Mandela Rule 11 this study found a mix of compliance and non-compliance among prisons in Africa countries. For example, countries like Equatorial Guinea and Cameroon complied with the rules as indicated below:

In Equatorial Guinea, there are separate quarters for men, women, and minors in the various prisons but they share a common area to take their meal, this shows compliance to a large extent with the Nelson Mandela rule. In addition, pre-trial detainees and convicted persons were housed separately though they shared a common area. Generally, Equatorial Guinea seems to comply with the Nelson Mandela rule 11 on separation of categories. Prisons in

Cameroon generally had separate wards for men, women, and children (U. S human rights reports, 2016). This shows compliance with Nelson Mandela Rule 11. Algeria is also reported to have different facilities for prisoners less than 27 years of age. In Ghana, juveniles are separated from adults; awaiting trial detainees from convicted persons though they are locked up in some prisons while women were separated from men. This shows compliance to a large extent with the Nelson Mandela rule 11.

However other countries such as Cote d'Ivoire, Sierra Leone, Uganda, Tanzania, Gabon, Swaziland, Morocco, Togo, Benin Republic and Mali did not comply with the Nelson Mandela rule.

The condition of detention concerning segregation of categories in Cote D'Ivoire is said not to be satisfactory at all. According to a UNICEF representative in Cote D'Ivoire, Kudhr, the prisons in Cote d'Ivoire did not meet international standards which require the complete separation of children from adults (IRIN,2017). In general, authorities held men and women separately, but there were reports that women and men were held together in some prisons. Authorities held juveniles with adults in some prisons, as well as pre-trial detainees with convicted prisoners (U. S, human rights report, 2016). This can lead to varying degrees of abuse.

EEAS (2017) reports that in prisons in Sierra Leone, minors are often locked up with adults while pre-trial detainees are held with convicted prisoners in most cases. This does not meet international standards neither does it comply with Nelson Mandela rule 11

In Uganda, Yusuf (2016) claimed that there was no compliance with the Nelson Mandela Rule 11. He alluded to the fact that prisoners raised the issue of holding minors with adults in Tanzania prison with the Zanzibar Chief Justice Omar Othman Makungu during his visit to the prisons. In Gabon, it was reported that in some cases, prison authorities held pre-trial detainees with convicted persons; minors with adults; and men with women. In other cases, there were separate holding areas within the prison for men and women but access to each area was not fully secured or restricted (U.S human rights report,2 016). This is in contravention of the Mandela rule 11 and this non-compliance could lead to any form of abuse.

Likewise, in Swaziland, pre-trial detainees are often locked up with convicted persons while minors are also locked up with adult offenders (u.s human rights report, 2010). This does not comply with international standards as stipulated in the Nelson Mandela Rule 11. In Morocco,

the law provides for the separation of minors: Youthful offenders are classified into 2 groups: minors under 18, and youthful offenders from 18-20 years. It is reported that in some cases, minors are locked up with adults in Moroccan prisons, while pretrial detainees are locked up with convicted persons. This does not comply with international standards as stipulated in the Nelson Mandela Rule 11. In Mali, it is stated that pre-trial detainees are locked up with convicted persons. In Togo, prison officials held pre-trial detainees with convicted prisoners. This is not abiding by the Nelson Mandela rule 11. (United States Department of State, 2016 Country Reports on Human Rights Practices - Togo,). In the Benin Republic, minors are locked up with adults while pre-trial detainees are locked up with convicted persons (U.S human rights report,2016). This does not comply with international standards as stipulated in the Nelson Mandela Rule 11. I

The Prisons Act of Zambia requires separation of different categories of prisoners, but only female prisoners were held separately; juveniles were often held together with adult inmates and pre-trial detainees with convicted inmates (U. S human rights reports, 2016). This shows partial compliance with the Nelson Mandela rule 11, therefore, does not meet international standards

From the data obtained from a review of the literature on separation of categories, most prison authorities in African countries do not comply with the Nelson Mandela Rule 11. In most cases, juveniles are locked up in the same cells with adult prisoners. This could lead to several cases of abuse such as sexual abuse, violence and exposing the juveniles to a larger world of crime. In addition, some lock up men and women in the same facility, this could also lead to cases of rape, and the privacy of the prisoners is not guaranteed. Equally, locking up convicted persons with those that are still awaiting trial could expose the pre-trial detainess to danger such as violence and being indoctrinated into the world of crime. All these have the potentials of making rehabilitation of prisoners to be ineffective thereby defeating the main philosophy underlining imprisonment. One of the major reasons given for prison authorities not separating prisoners according to categories is the issue of overcrowding in prisons. The excuse is however not justifiable because you do not use a wrong to create another wrong. Administrators in the criminal justice system should make use of alternatives to imprisonment as one of the means of decongesting the prisons

5.2.7 Food

Nelson Mandela Rule 22 which states that

Every prisoner should be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength of wholesome quality and well prepared and served.

2). Drinking water shall be made available to every prisoner whenever he or she needs it

In most prisons in Africa the food situation seems to be in a crisis as some of the prisons do not give enough food in terms of quality and quantity. The following facts were discovered during the literature search (UNODC, Nelson Mandela Rules, 2015:7).

Prisoners in Malawi prisons are not provided with adequate diets, for example Sola & Hernandez (2015) reports that prison inmates in Chichiri prison, in Malawi were fed once a day. This according to the authors is due to the small budget the government allocates to the penal system and there are reports of malnutrition amongst prison inmates in Malawi. Denial of food is cruel, inhumane and degrading treatment. This is not in conformity with the Nelson Mandela rule 22.

The food situation is not different in prisons in Cote d'Ivoire as there are reported cases of malnutrition. The prison service director at the Ivorian Ministry of Justice was quoted during an interview as saying that the *'prison budgets can't meet the nutritional needs of the detainees'* (ICRC, 2014). In Cote d'Ivoire potable water was not always available. This does not conform to international standards as well the Nelson Mandela Rule 22.

In Zimbabwe, food supply has been a challenge in the prisons since the economic meltdown in 2008. According to Zimbabwe Lawyers for Human Rights, about 100 inmates died of malnutrition in 2013. A senior official of the Zimbabwe Prisons and Correctional Services, the officer – in – charge of Chikurubi Maximum Security Prison was quoted as informing the human rights committee member of Zimbabwe's parliament during an oversight visit to the prison that *'Food is not all that adequate, we do not have enough food'* (News 24, 2015). An ex-inmate was equally quoted by Mail & Guardian that *'we mostly receive one meal a day or occasionally two. With regards to availability of water, 'we only get running water three times a week and that is health hazard'* one prisoner said, urging lawmakers to take a look at the toilet in their cells, an inmate in Zimbabwe telling MPs parliament's human rights committee who visited the

prison (News24,2015). Inadequate food and water to prisoners can be regarded as cruel, inhumane and degrading treatment. Not only that this act aggravates the suffering of prison inmates. It does not meet the minimum requirement of the Nelson Mandela rule 22.

In Zambia, food and drinking water are inadequate in quality and quantity. Prisoners receive only one meal of cornmeal and beans per day, called a '*combined meal*' because it represents breakfast, lunch, and dinner (Bureau of Democracy, Human Rights, and Labor, 2011). Drinking water is scarce and when available is often unpotable (Todrys et. al., 2011). According to the U.S human rights report of 2016, many prisons in Zambia had meager food supplies, and a lack of potable water resulted in serious outbreaks of water – and food- borne diseases including dysentery and cholera. Furthermore, the U.S human rights reports 2016 shows that inmates received breakfast, mostly a cup of simple meal or porridge for which inmates must secure their own sugar, and lunch served in double portions. Failure to provide lunch and supper separately was attributed to a lack of electric stoves and pots. This type of treatment reduces the human dignity of prisoners and is subjecting them to further suffering side from that which they are exposed to as a result of imprisonment. The food and water situation in Zambia prisons does not meet international standards.

In prisons in Chad, a meal is served once a day. Prisoners cook for themselves. The food, mostly millet bread with okra sauce (Prison Insider, 2015 International Prison Observatory - Chadian section). Prisoners reported that they ate only once a day at irregular times, and that food was of poor quality. In some cases, meals are served on collective plates from which prisoners ate in groups of six to ten; due to insufficient food supplies, some inmates received nothing at all. On several occasions, Amnesty International's researchers witnessed food being placed directly onto a filthy mat on the floor for prisoners to eat (AI, 2012). This is a negation of the letters and principles of the Nelson Mandela Rule 22 and gross violation of the fundamental human rights of prisoners in Chad.

HRW (2011) reveal that prison food in Uganda is nutritionally deficient leaving inmates vulnerable to infection and diseases. In addition, it was reported that water is often unclean or unavailable in Uganda Prisons. EAAS (2017) mentioned that there was lack of food in Sierra Leonean prisons while the SLHRC described the food available to prisoners as inadequate. The food situation report in Sierra Leone prisons could be attributed to a finding by HRW 2015 report which alludes to the fact the Bureau of Prisons, received 2,500 Leones (half a U.S dollar) per prisoner per day. One wonders what will 2,500 Leones buy with the current inflation rate.

It will not be surprising if this daily food allowance dates back to the colonial era. This is a form of reducing the human dignity of prisoners in Uganda. One cannot confidently say that the amount, 2,500 Leones can provide a meal for a toddler not to talk about a daily provision for an adult who is in detention.

In Gabon, AI (2017) observed that prisoners are often denied access to decent food while the U.S report 2016 on human rights highlighted that apart from the fact that prisoners have limited access to food, the food is also of low quality. Aside from lack of quality food, prisoners in Gabon also have limited access to water. This is a cruel and inhumane treatment and does not comply with the Nelson Mandela Rule 22.

With regards to the food situation in prisons in Swaziland, the study could not reach a conclusion as there was conflicting information. While the U.S report on human rights, 2015 claimed that the prison authorities provide food and water for prisoners on one hand. On the other hand, a UN group is to investigate the inhumane condition in Swaziland prison in July 2017 and one of the inhumane conditions to be investigated by the UN team is the inadequacy of food to prisoners. It is hoped that the report of the UN team will clarify the true position regarding food situation in Swaziland prisons

According to U.S human rights report of 2016, if and when food is provided in Mali prisons it is usually insufficient in both quality and quantity. It was also reported that not all prisons had access to potable water (U. S human rights report, 2016). The food and water situation in Malian prisons does not meet international standards and it amounts to torture, cruel, inhumane and degrading treatment and a clear negation of Nelson Mandela Rule 22.

In Morocco, the DGAPR states that prisoners are provided with food and water at no cost and that since 2015, a private company provided options which were not previously available. However, the AI 2015/2016 annual report indicated that prisoners in Morocco often use hunger strike to protest harsh conditions which include inadequate nutrition. This suggests that the DGAPR may be providing food for prisoners in Morocco but the question is in what quality and quantity? One can say that in Moroccan prisons there is compliance to the Nelson Mandela Rule 22. However, further investigations should be conducted to verify this claim.

According to Country report 2015 of Freedom House, Algeria did not meet international standards (Freedom House,2016). One of the reasons for this is that the nutrition of prisoners is described as being poor. In the Benin Republic, malnutrition in prisons is one of the reasons

why the 2015 Watchdog on the Justice system describe prison condition in Benin Republic to be poor while U.S human rights report listed inadequate food as one of the reasons why prison condition in Benin is termed as being harsh and life-threatening. In addition, a team of the UN Subcommittee on Prevention and Torture at the end of an inspection of some prisons and detention centers advised the government that to avoid the extreme suffering of prisoners that it *'is essential and urgent to improve detainees' access to water and food.'* (UNHRC, 2016). The implication of this statement is that the food and water situation in prisons in Benin Republic is inadequate. It was also reported that inmates of Abomey prison staged a violent protest regarding harsh prison conditions especially a week-long lack of drinking water (U. S human rights report, 2016). This food and water condition in Benin Republic did not meet the minimum requirements of the Nelson Mandela Rule 22.

The food and water situation in Angola prisons is not different. For example, it was reported that the Director General of Penitentiary Services in April 2016 acknowledged that one of the jails in Angola, Vienna lacked adequate potable water and food for inmates (Novo journal,2016).With the Director General's acknowledgement of the lack of food and water in some prisons in Angola, the prisons did not meet international standards as highlighted by the Nelson Mandela Rule 22 In Kenya, Omboto (2010) asserts prison condition in Kenya is characterised by poor diet and lack of water amongst others. Similarly, Mnyamweze, et.al (2015) stated that food rations and water are hardly enough in Kondaga and Wundayyi prisons in Kenya. Muhji (2017) in a summary of the literature on prison conditions concluded that shortage of food and clean water as some of the main features of Kenya Prisons. This is not in compliance with the minimum requirements of the Nelson Mandela rule 22. In Democratic Republic of Congo, IPS (2010) writes that prison inmates are often deprived of food. In addition, AVS (2015) listed little food as one of the reasons why prison conditions in DRC is described as very concerning. This is cruel, an inhuman treatment which amounts to torture.

In South Africa the JICS 2015/2016 report it is a statutory requirement (section 8 of the CSA) that all inmates must be served with 3 meals per day. The meals must be served at intervals of not less than four and half hours and not more than six and a half hours. The exception is that there may be an interval of not more than 14 hours between the evening meal and breakfast. In addition, food must be well prepared and promote good health. Citing 52 instances, the JICS found that Department of Correction Services did not adhere to the time interval between supper and lunch. This includes 16 centers where inmates are only offered two meals per day. In 36 centers "double-up meals" are served. DCS indicated that a combination of overcrowding

and understaffing (including the shift system) makes it very difficult to adhere to the Act. The serving of only two meals per day (lunch and supper being combined) and/or meals outside the prescribed time frames has potentially severe consequences, especially on inmates who take chronic medication, at night as some of the medication needs to be combined with a meal (JICS report 2015/2016:52-53). Finally, World report (2015) states that food and water situation is inadequate in Eritrea prisons.

From the report obtained from the literature search, it is evident that most prisons do meet the minimum requirement regarding the provision of food in quality and quantity as well as potable water as stipulated by the Nelson Mandela Rule 22. Inability to provide nutritious food and potable water makes prisoners susceptible to diseases. The situation is compounded because of lack of adequate medical facilities. From my own point of view, this inadequacy of not providing water and food amounts to torture and cruelty. It is a reduction of human dignity and it is an infringement on the right to live a good life. It is important to state here that this type of treatment cannot lead to the effective rehabilitation of prisoners. One wonders how will a prisoner starved of food and deprived of water be positively predisposed to any form of rehabilitation.

5.2.8 Sanitation

Nelson Mandela Rule 15 states that:

The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in clean and decent manner (UNODC, The Nelson Mandela Rules, 2015:6).

Most prisons in Africa did not adhere to the rule regarding sanitation. For instance, in South Africa, Agboola (2016) in a study where she interviewed female prisoners in South Africa's Correctional facilities an interviewee Bonolo said inmates actually fight in the showers she was quoted thus *'when the first warden walks past and say; you can go bath' you have to go and bath at that time so as to avoid rush to the bathroom later, which may result into fight'*. In addition, Gordon & Cloete (2013) described prison conditions in South Africa as being horrifying. They noted that those prison conditions are unhygienic for many reasons which include an insufficient number of bathrooms and inadequate supplies of toilet paper and soap. This type of condition of sanitation in South Africa correctional facilities is not in compliance

with the minimum requirements of the Nelson Mandela Rule 15 and aggravates the suffering of prison inmates.

In Kenya, some journalists and human rights activists that accompanied members of parliament to visit some prisons were quoted regarding the sanitation situation in the prisons visited thus ‘the wards are filled with the fetid smell of sweat, dirt and human waste (Myamweze et.al 2015). Likewise, Omboto (2010) reported poor sanitation in prisons in Kenya. This does not meet the requirements of the Nelson Mandela Rule 15. EAAS (2017) described the sanitary condition in prisons in Sierra Leone as ‘*terrible*’. According to Fontebo (2013:113), the hygiene and sanitation in almost all prisons in Cameroon except for Mfou women's prison is appalling. The author further describes the sanitary condition in some prisons in Cameroon ‘*the dustbins are insufficient and not emptied as often as necessary, there is considerable littering of cough sputum all over, the septic tanks are full.....*’ Likewise the U. S human rights report of 2016 indicated that there were reports of detainees using buckets as latrines in prisons in Cameroon. This is unacceptable in the 21st century. The sanitary condition in Senegal is described as being poor according to the U. S human rights report of 2016. The sanitary conditions described in the various prisons in this paragraph shows a gross abuse of human rights, amounts to cruel, degrading and inhumane treatment

The situation in Ghana Prisons does not tell a different story. The sanitation situation is described as deplorable. This was captured in a narrative of an inmate at the Navrongo prison during the visit of the Interior Minister to the prison ‘*even to get soap to the bath is a problem, let alone to talk of washing clothing. The sanitary condition here is not the best. Our bath and toilet facilities are too small to contain our number*’ (Akapule, 2014). One of the reporters who was in the Interior Minister's visiting team opined that the dehumanising nature and the plight of the prisoner the Navrongo prison was not an isolated case. He reasoned that there is no gainsaying that the prevailing condition in Navrongo prison is not different from the prisons in Ghana (Akapule, 2014). In 2013, the UN Special Rapporteur, Mendez listed the unsanitary conditions in Ghana prisons among other things that make prison conditions in Ghana to be described as being cruel, inhumane and degrading treatment. Regarding Mali, lack of sanitation continued to pose the most significant threat to prisoner’s health, as buckets still serve as toilets (U.S human rights report, 2016). The sanitary conditions do not abide by the Nelson Mandela Rule 15

The HRW in its 2016 report shows that in a prison called Scorpion in Egypt, authorities do not allow inmates possess basic amenities for comfort and hygiene such as shampoo, comb, toothbrushes, toothpaste, shaving sticks among others. The prisons in Benin Republic are described by U.S human rights report of 2016 as being harsh and life-threatening because of the unsanitary conditions among other factors. CHEAA (2013) reported unsanitary conditions in Chichiri prisons in Malawi. In addition, Nyala Times (2017) indicated that unsanitary conditions seem to pervade most prisons in Malawi such as the prisons in Karonga, Chichiri, Maula and the Maximum Prison in Maula. In Chichiri prisons, 180 inmates share a shower whereas the minimum standard during a humanitarian crisis is one shower to 40 people. The sanitary condition of prisons in Egypt, Benin Republic, and Malawi described above is not in line with the principle and letter of the Nelson Mandela Rule 15 and could be regarded as a form of torture.

The sanitation situation in Zambia Prisons leaves much to be desired. The dire state was described by a leader of opposition in Zambia, Chilufya Tayali, the head of the Economic and Equity Party, who had a brief stint in a Zambian jail. *‘Ablutions were basic: the pit toilet in the corner was encrusted with faeces and had no running water. Occasionally guards would pass a bucket of water into the cell, and prisoners would attempt to clear toilet blockages with a stick if one was provided — or their hands, if not’*. Furthermore, ZHRC posits that sanitary facilities in Zambia prisons are often non-existent or broken down so prisoners are forced to use buckets or piles of sand as toilets (HRC, n.d.). The sanitation situation in most prisons in Zambia is degrading and does not uphold human dignity. It is a negation of the Nelson Mandela Rule 15.

In Chad, AI reports that hygiene, sanitation, and scarcity of water are a serious concern. In some prisons, sewage systems have been blocked for years. Stagnant wastewater combined with human excrement in prison courtyards and even outside the prison poses a serious health risk for prisoners, staff and the local community in which the prisons are situated (AI, 2012). The sanitation situation in prisons in Chad depicts cruel, inhumane treatment and infringement of the fundamental human rights of prisoners in Chad, does not meet the basic requirements of the Nelson Mandela Rule 15

From all the prisons highlighted, none of the prisons met international standards. The sanitary conditions in these prisons amount to cruel, torture and inhumane treatment as well

abuse of prisoners' human right. It is intended to humiliate prisoners and deprive them of their dignity to life.

One common denominator amongst most of the countries is that these unhealthy sanitary conditions have been like that for a long time ago and it seems as if the government is less concerned about the sanitary conditions in these prisons. The researcher is of the opinion that rehabilitation and reformation cannot take place in this kind of despicable, inhumane and cruel sanitary conditions in Africa prisons.

5.2.9 Beds and Bedding

Nelson Mandela Rule 21 states that:

Every prisoner shall in accordance with local or national standards, be provided with a separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure cleanliness (UNODC, The Nelson Mandela Rules, 2015:7).

Most prisons in countries in Africa do not abide by this rule. The most obvious reason is the overcrowding nature of the prisons. Below are some of the descriptions of the bedding situation in some prisons in African countries.

In Zambia, the extreme overcrowding in prisons means that inmates have to spend nights in a sitting position or sleep in shifts with no blankets or mattresses and little ventilation (ZHRC, n.d.). In Chad, most prisoners sleep in a narrow bed, on the ground or on a prayer mat with several others standing or squatting to sleep (Prison Insider, 2015 International Prison Observatory - Chadian section). This situation in prisons in Zambia and Chad did not meet the minimum requirements of the Nelson Mandela rule 21.

The situation is not different in Togo, this is captured in the statement of an inmate "*We sleep very close to one another, with our heads on someone else's feet, like sardines in a tin. At night we sleep in shifts, while some lie-down, the others stand against the wall waiting impatiently for their turn,*" an inmate in the Lome prison told IRIN on condition of anonymity (IRIN, 2012). Non provision of bed and beddings in prisons in Togo do not comply with the international standards. The description of how the inmates in Togo prisons sleep amount to cruel, inhumane and degrading treatment. It is a gross abuse of the prisoner's human rights. In addition, this kind of treatment could lead to psychological and even physiological disorders

as there is a minimum requirement of a number of hours for an individual to sleep. No form of rehabilitation could take place with this kind of treatment

According to the HRW 2016, families of prisoners in Scorpion, a prison in Egypt claim that inmates sleep on concrete platforms without mattresses and other beddings. In Uganda, it was reported that due to lack of space prisoners are spending their nights standing as there are not enough beddings and space to lie down (Shridharam, 2015). In reacting to this situation, the Chairperson of Uganda's parliament Public Accounts Committee (PAC) Alise Alabo said '*it is a shame that we have prisoners who sleep while standing because of congestion in prisons. This is a violation of human rights*'. In a report of visits to all the seventeen prisons in Sierra Leone by representatives of OHCHR in 2012, it was observed that most prisons do not have bed and beddings (OHCHR/UNIPSIL, 2012:25). This is in spite of provision of bed and beddings by the UN in 2009. The situation has not changed as at 2016 when Kamara (2016) stated that prison cells in Sierra Leone lack beddings. Likewise, in Kenya, Mnyamwazi et.al (2015) observed during a visit to prisons with parliamentarians in Kenya that there were shortages of sleeping materials, the convicts sleep on tattered mattresses with worn out blankets while in Equatorial Guinea prisons are said to lack mattresses. The bed and bedding situation in prisons in Egypt, Uganda, Sierra Leone, Kenya and Equatorial Guinea does not meet international standards. It is a negation of the basic requirements of the Nelson Mandela Rule 21.

From the 2015/2016 report of the JICS, some prisons are having shortages of bed space in South Africa. This implies that some of these prisons do not have sufficient beds and beddings. For example, the Pollsmoor Remand is having a shortage of 2 448 beds, Johannesburg Medium B having a shortage of 1 736 beds, Polokwane having a shortage of 730 beds and, St Alban Medium A having shortage of 709 beds (JICS report 2015/2016:49).

From the above information obtained from the literature, it is apparent that prisons in some African countries do not comply with the rule 21 of the Mandela rules. Not providing enough beds and beddings to prison inmates is dehumanising, inhumane, shows that prisoners are not treated with respect does uphold their inherent human dignity. Lack of adequate sleep has its own inherent consequences. In this type of situation, no rehabilitation could take place. The consequences of not have bed and beddings is enormous. For example, no rehabilitation could take place in this type of conditions, in addition, this condition has the tendency to breed violence and could also result in psychological and physiological conditions for prisoners who

are not getting adequate sleep. The prison authorities must take immediate actions on to rectify this anomaly.

5.3 Administration

Prisoner file management

The Nelson Mandela Rule 6 which states that:

There shall be a standardised prisoner file management system in every place where persons are imprisoned. Such system may be an electronic database of records or a registration numbered and signed pages. Procedures shall be in place to ensure audit trail and to prevent unauthorised access to or modification of any information contained in the system.

Nelson Mandela Rule 7 which states that:

No person shall be received in a prison without a valid commitment order. The following information shall be entered in the prisoner file management system upon the admission of every prisoner:

- (a). Precise information enabling determination of his or her unique identity, respecting his or her self- perceived gender;
- (b) The reason for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- (c) The day and hour of his or her admission and release as well as of any transfer
- (d). any visible injuries and complaints about prior ill-treatment;
- (e) An inventory of his or her personal property;
- (f) The names of his or her family members, including, where applicable, his or her children, the children's age, location, and custody or guardianship status; and
- (g) Emergency contact details and information on the prisoner's next of kin.

The Nelson Mandela Rule 8 states that:

The following information should be entered in the prisoner file system in the course of imprisonment, where applicable:

- (a) information related to the judicial process, including dates of court hearings and legal representation;
- (b) Initial assessment and classification reports;
- (c) Information related to the behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment, unless they are of a confidential nature;
- (e) Information on the imposition of disciplinary sanctions; and
- (f) Information on the circumstances and causes of any injuries or death and, in the cases of the latter, the destination of the remains.

The Nelson Mandela Rule 9 states that:

All records referred to on rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to reactions authorised under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.

The Nelson Mandela Rule 10 states that:

Prisoner file management systems shall also be used to generate reliable data about trends relating to and characteristic of the prison population, including occupancy rates, in order to create a basis for evidence-based decision making (UNODC, The Nelson Mandela Rules, 2015:4-5).

The prison authorities are expected to maintain adequate records of all prisoners and detainees in their custody. This section will present the findings of a literature search on the administration vis-à-vis record keeping, the presence of ombudsman, visits where possible and other matters.

The record keeping in prisons of DRC is irregular and inadequate. The U.S report on human rights, 2016 noted that some prison officials could only estimate the number of detainees in the facility. In prisons in DRC, there is no ombudsman where prisoners could lodge complaints of prison conditions or ill-treatment. The U. S report also indicates that there is widespread

corruption among prison officials, this is evident in selling of space and receiving payments for a visit (the U. S human rights report, 2016). This does not comply with Nelson Mandela rule 7,8,9 and 10. The implication of not having adequate record keeping of prisoners could lead to detaining persons beyond the time stipulated by law and another form of abuse. Furthermore, not having an ombudsman is a violation of the rights of these prisoners.

The record keeping in prisons in Equatorial Guinea seems adequate as the Ministry of Justice registered cases and tracked prisoner's status. In addition, authorities assigned a prosecutor to regularly visit prisons and track status of inmates' cases. A local judge served as full-time ombudsman to monitor the status of prisoners and hear complaints about sentencing. However, authorities do not generally permit prisoners and detainees to submit complaints. This is an abuse of the fundamental rights of prisoners to complain and be heard. It is equally reported that the few complaints submitted the hygiene. This did not meet international standards (U.S human rights report, 2016). To a certain extent, the record keeping of prison authorities in Equatorial Guinea appears to meet international standard.

In South Africa's Department of Correction Services, the record keeping is not satisfactory. This inadequacy was acknowledged by the Correctional Services Minister in his 2015/2016 budget speech where he said that *'the Auditor General still has a serious concern about the credibility of our records.'* Furthermore, the Auditor General report of 2015/2016 stated that *'the Department of Corrections Services record for its incarceration, rehabilitation, and care program was not reliable when compared to the evidence provided'. This call to question the several crucial indicators such as a number of inmates who had escaped died an unnatural death and were injured in assault'* (Daily Maverick, 2017). Lack of adequate record keeping South Africa correction facilities shows non-compliance with the Nelson Mandela rules 7,8,9, and 10, hence does not meet international standards.

The record keeping in Uganda prisons is inadequate due to lack of computers (U.S human rights report, 2016). In Uganda Prisons there is a human rights committee responsible for addressing complaints and relaying it to an Assistant Commissioner of Prisons. However, there is a lot of backlog of complaints. This could be translated as the ineffectiveness of the Ombudsman when complaints are not treated expeditiously. In Gabon, the record keeping is inadequate. In addition, there is no ombudsman or comparable independent authority available to respond to prisoners' complaints (U.S human rights reports, 2016). This does not conform to international standards or meet the minimum requirements as stipulated by the Nelson

Mandela rules. The absence of an ombudsman could also give room for rights of prisoners to be infringed upon without the hope of a redress.

In prisons in Mali, the record keeping is inadequate and there are no efforts to improve it (U. S report on human rights report, 2016). There is no ombudsman in prisons and authorities did not use alternative sentencing for non-violent offenders. Similarly, in Kenya prisons, the record keeping is inadequate, though there were efforts made to improve the record keeping the U.S human rights report, 2016). There was also an improvement in the mechanism for prisoners to report abuse and other concerns. This was made possible through collaboration between the Kenya Prison Service and Kenya Human Rights Commission to monitor human rights standards in prison and detention centers (the U. S human rights report, 2016). The inadequate record keeping in prisons of Mali and Kenya does not meet the minimum requirements, therefore does not meet international standards.

The U.S report further indicated that record keeping in prisons in Malawi is inadequate and that the complaint process is verbal and informal. This allows for censorship and inmates' ability to lodge complaints to avoid backlash from prison officials (the U.S human rights report, 2016). Inadequate record keeping in Malawi does not abide by the Nelson Mandela rule 7, 8, 9 and 10; hence it did not meet international standards.

In Angola, there is no ombudsman in prisons where inmates could lodge complaints about prison conditions and human rights abuse. Corruption is said to be rife among prison officials. There were reports of prisoners including violent ones paying fees and bribes to secure their freedom (the U. S human rights report, 2016). The absence of an ombudsman in prisons in Angola is an infringement on the fundamental human rights of prisoners as there is no platform to lodge their complaints. This also aggravates the suffering of prisoners in Angola.

In Benin Republic, there is no formal system to submit complaints by prisoners without censorship. In addition, there are no alternatives to incarceration for non- violent offenders. There is evidence of corruption among prison officials who charged visitors amount ranging from 500 CFA francs to 1000 CFA francs. The act of corruption is a violation of human rights and could discourage friends and families of detainees from visiting their relatives thereby increasing the pains of prisoners (the U.S human rights report, 2016).

It is not all negative news concerning record keeping in prisons in countries in Africa. In Morocco, the record keeping in prison is adequate. The National Council for Human Rights

(CNDH) and General Delegation of Prison Administration effectively served the function of the ombudsman. However, prison authorities do not implement an alternative to imprisonment for non-violent offenders.

The lack of proper record keeping negates the Mandela rule 7, 8, 9 and 10 makes prisons in Africa not to meet international standards. Lack of adequate records could mean a case of neglect and non-challance regarding prison inmates. The inadequate record may also lead to abuse of all kinds, such as making inmates stay longer than they ought to stay in prisons. It may also lead to an inability to appear in court as at when due. The absence of ombudsman is of great concern because it denies the prisoners the right to air their complaints regarding prison conditions and abuse of human rights. It will be difficult if not impossible for effective rehabilitation to take place in prisons where inmates could not lodge complaints and such complaints would be attended to.

5.4 Independent monitoring

Internal and external inspections

Rule 83

1. There shall be a two-fold system for regular inspections of prisons and penal services:
 - (a) internal or administrative inspections conducted by the central prison administration;
 - (b) An external inspection conducted by a body independent of the prison administration, which may include competent international or regional bodies.
2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected (UNODC, The Nelson Mandela Rules, 2015:25).

The importance of inspection or monitoring of prisons cannot be underestimated giving the prevailing poor conditions in most prisons and the need to ensure that the well-being and fundamental human rights of prisoners are ensured. From the review of available literature, prisons authorities of some countries abide by this rule, some abide partially while others do not abide by the rules at all. The finding is presented hereunder. It need be said that most of the information in this section was obtained from the U. Human Rights report.

Among the countries that abide by the Mandela Rule on inspection are Ghana, Kenya, Sierra Leone, Mali, Algeria, Angola, Democratic Republic of Congo and Malawi. In Ghana, the government and prison authorities permitted independent monitoring of prison conditions. Some NGOs are working in collaboration with Ghana Prison Service to alleviate overcrowding. One of such organisations is Correction Reform Platform (COREP), Angel-Zoe Foundation an NGO that assist women and juvenile prisoners. The foundation assisted in rehabilitating a dormitory block for Accra Senior Correctional center to support the ever-increasing juvenile inmates at the center (Citifmonline, 2017).

In Kenya, the government permitted prison visits by independent NGOs. Likewise, in DRC, the government and prison authority normally allow international organisations such as International Committee of the Red Cross (ICRC), organisations such as International Committee of the Red Cross (ICRC), United Nations Organization Stabilization Mission in the DR Congo (MONUSCO) and local NGOs access to official detention centres managed by Ministry of Interior (U.S human rights report, 2016).

The government of Sierra Leone permitted monitoring by independent non-governmental observers. International monitors also have unrestricted access to the prisons, detention centers and police cells. The HRCSL monitored prisons on a monthly basis. However, in 2013, HRCSL was denied access to monitor Central prison Pademba road prison for the sixth time despite approval the Internal Affairs Ministry (Shekau, 2013). This brings to the fore again the question of the efficacy of independent monitors? Refusal by prison authorities is against Mandela rule 83. There is a likelihood that a lot of inhuman treatment is on-going at this prison that the prison officials do not want the world to know about.

Furthermore, authorities in Malawi allow domestic and international NGOs and the media to pay visits and monitor prison conditions and donate basic supplies (U.S human rights report, 2016). Domestic NGOs such as CHREAA, the Malawi Red Cross, and diplomatic representatives had unrestricted access to prisons. In a similar vein, the government in Angola permitted visits to independent local and international human rights observers and foreign diplomats. Similarly, the government in Algeria allowed ICRC and local human rights observer to inspect prison and detention center regularly (U.S human rights report, 2016).

In Mali, the government permitted visits by human rights monitors and human rights organisation. However, the government expected NGOs and others to submit a request to Prison Director who then forwarded the request to the Ministry of Justice. According to the

U.S Human Rights report, the Malian Association of Human Rights visited prisons in Kati, Bamako and other locations outside the North of Mali. ICRC officials also visited prisons in Bamako, Sikasso, Koulikoso, Gao and Timbuktu (U.S human rights report, 2016). The Moroccan authorities permitted some NGOs with human rights mandate to conduct unaccompanied monitoring visits. In addition, government policy permitted NGOs that provide social, educational or religious services to prisoners to enter prisons (U.S human rights report, 2016).

The situation of independent monitoring in Cote d'Ivoire is neither here nor there. In 2014, Marina Perria, an ICRC Protection Officer states that she conducts regular visits to Abidjan's Maison d'arret e Correction. According to her on October 11, 2014, ICRC delivered supplies to the prison. However, in February 2017, AI submit that prison authority refused a request for AI to conduct unfettered visits to the Maison d'Arret de Correction and other detention centers in Abidjan (AI,2017:3). The report further said that despite multiple requests AI had not had access to any detention center since 2012. In the U.S report of 2015, it was stated that the government generally permitted ICRC and UNOCI access to prisons while local human rights groups reported sporadic visits to the prisons. acjr (2016) also reported that government of Cote de 'Ivoire permitted the UN and international NGOs adequate access to formal prisons although this is not the case for the informal detention center. An example of such NGOs that visit the prison is ACAT Cote de 'Ivoire (acjr, 2016).

In Gabon, the government technically gave permission to human rights organisations to conduct independent monitoring of prison conditions and visit prisons. However, some of the human rights organisations reported difficulties in gaining access to prisons (Freedom in the World, 2016).It was also reported that ICRC and a local NGO Malachie visited the prisons

Authorities in Swaziland denied access to independent monitoring of prisons. For example, the ICRC and other domestic and international human rights groups are not permitted to monitor prison conditions.

Based on the findings of a review of the literature regarding inspection or monitoring of prison conditions, it could be concluded that while some are abiding with the rule, some are abiding partially while others are not abiding at all. One question that keeps on bothering the mind of the researcher is that of what relevance is the independent monitoring of prison condition? Coming from a point that most of the recommendations of these inspection exercises are hardly

implemented by the government and prison authorities. What can these independent monitoring organisations do to ensure the required changes in prison conditions?

5.5 Chapter Summary

This chapter presented findings on a literature search on the prison conditions in some countries in Africa, as typified by the physical structure, prison conditions, and overcrowding, medical care, separation of categories, food, sanitation beds, and bedding. In addition, the chapter described findings based on a literature search on prison administration in some Africa countries in relation to record keeping, the presence or otherwise of ombudsman in the prisons and in some case if there were alternatives to incarceration. Finally, this chapter presented the findings from a review of literature on independent monitoring, internal and external inspection of prisons in some African countries. These indicators were measured against the Nelson Mandela Rules and the Kampala Declaration. Regarding the physical structure, the study revealed that the physical structures of most Africa prisons were built during the colonial days; some of the structures were not designed as prisons and the few that were to be prisons were meant for punishment. The chapter further revealed that most of the buildings are old, dilapidated, has not been renovated or refurbished over a period of and lacked modern day facilities; hence they did not meet international standards.

Furthermore, the chapter indicated that the prison conditions in most African countries are poor, have remained poor. There were several terms such as life-threatening, deplorable, harsh, inhumane, and substandard for human beings were used in different literature to describe the prison conditions in African countries. Some factors that have made prison conditions to be poor and inhumane are overcrowding, lack of medical care, inadequate food and water, unsanitary conditions. The prison conditions of most African countries did not comply with the Nelson Mandela Rule and the Kampala Declaration.

Likewise, the findings in this chapter based on a review of literature stated that most prisons in Africa countries are overcrowded. Terms like endemic, alarming, of great concern were some of the terms used to describe the overcrowding nature of Africa prisons. Literature also revealed that prisons in East Africa, West Africa, and Central Africa were among the five regions that have the highest occurrence of overcrowding in the world. The chapter also indicated that the overcrowding nature of prisons actually started from the colonial era. However, some countries such as Zimbabwe made attempts at decongesting the prisons as the President granted pardon

o over 2000 prisoners. The findings of the study indicated that most prisons in Africa did not abide by the Nelson Mandela Rules.

In addition, the findings as recorded in this chapter show that the medical care in most African prisons is inadequate. The study revealed that in some prisons in African countries, there are no qualified medical personnel, in some few countries where there are medical personnel the number of such is highly negligible when compared to the number of prison inmates. The chapter as well revealed that there are no medicines in prison clinics in most African countries. Similarly, the chapter records that there were insufficient medical facilities and equipment. The study shows that most African prisons did not meet international standards.

With regards to separation of categories, the finding in this chapter indicated that some prisons in Africa countries met the minimum requirement of separating female prisoners from female offenders; adult prisoners from juvenile offenders as well as convicted offenders from awaiting trial detainees. However, most of the prison in Africa did not comply with the Nelson Mandela rule. The findings show that in some cases adults are locked up with minors; male locked up with female and convicted locked up with awaiting trial detainees. the study indicated this condition could lead to various forms of abuse.

Additionally, in this chapter, it was indicated that most prisons have unsanitary conditions characterised by inadequate facilities such as showers, functional toilets, inadequate supply of toilet soaps, washing soaps. Some of the toilets are also non- functional with septic tanks overflowing with excreta visible in some prisons. This is also in the negation of the Nelson Mandela Rule.

On the issue of availability of food and water, the findings presented in this chapter demonstrate that inadequate food and non - availability of potable water characterised most African prisons. In some cases, prisoners were fed only once in a day, where food is available the quality and quantity is not adequate as well as the fact that the food is nutritious deficient. Most prisons do not have potable water. This amount to degrading, inhumane and cruel treatment hence does not meet international standards.

Finally, in relation to beds and beddings, the findings observed that most prisons in African countries do not have adequate beds and beddings. For example, in some prisons like Uganda prisoners sleep standing, while in others like Togo prisons prisoners sleep packed together like a sardine. This does not meet international standards.

Also in this chapter, findings on administration with reference to record keeping, presence or absence of ombudsman, availability or otherwise of an alternative to imprisonment was presented. The findings show that most prisons in African countries do not have an adequate record keeping, while only a very few ones keep adequate records of prisoners. This does not meet international standards and does not comply with Nelson Mandela rules. The study from the review of literature equally observed that some prisons in Africa do not have ombudsman where prisoners could lodge their complaints regarding prison condition as well as laying complaints about any form of abuse. The few prisons that have ombudsman do censor prisoner complaint and others do not attend to various complaints of prisoners.

Lastly, the findings of literature review on independent monitoring of prisons in Africa indicate that while some prison authorities and government grant access independent observers and monitors to inspect prisons in their countries with a view to investigate whether there are good practices as stipulated by the Nelson Mandela rules, Kampala Declaration and other of such designed to ensure that the rights of prisoners are protected.

In conclusion, the chapter disclosed that the prison conditions, administration and independent monitoring in Africa do not meet international standards, does not abide with the principles and letters of the Nelson Mandela Rules and the Kampala Declaration. Though both, that is Nelson Mandela Rules (in the name) and the Kampala Declaration are African in name, most of the prisons in Africa are not complying with the content of these two 'African' declarations. This brings to the fore again the question whether imprisonment in Africa is designed as a punishment or rehabilitation. It is practically impossible for any form of rehabilitation to take place in the kind of environment described in this chapter.

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Chapter 6

Pre - trial detainees in Africa countries

6.1 Introduction

This chapter focuses on a category of detainees often referred to as pre-trial detainees. In this chapter, definition of pre -trial detainees were given. In addition, the available current statistics of pre - trial detainees in African countries was presented. In addition, case studies of conditions of pre-detainees in some Africa countries will be presented in relation to the Nelson Mandela Rules, the Luanda Declaration and the constitutional provisions of the countries under review. The chapter would highlight some of the causes of a high number of pre- trial detainees in African countries.

6.2 Definition of pre trial detainees

The issue of pre-trial detainees has been of great concern and has generated a lot of discourse. It is important to have a look at some of the definitions of pre-trial detainees. This the researcher will put us in a proper perspective in understanding the concept. Firstly, Nelson Mandela Rule, Section C Rule111: 1 categorised pre-trial detainees as persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in the police custody or in prison custody (jail) but have not been tried and sentenced (UNODC, the Nelson Mandela Rules, 2015:32). Secondly, the Guidelines on the conditions of arrest, police custody and pre-trial detention in Africa often referred to as Luanda Declaration, describe ‘pre-trial – trial detention as the period of detention ordered by a judicial authority pending trial (ACPHR,2014:14). Brian (2004) explains pre-trial detainees, as people being detained because bail could not be posted or because the release was not denied. In, pre-trial / remand detainees could be described in connection with an alleged offense or offenses, are deprived of liberty following a judicial or other legal process but have not been definitively sentenced by a court for the offense (s).

Todrys, Amon, Malembeka &Michaela Clayton (2011) refer to pre-trial detainees who have been formally charged and are awaiting the commencement of their trial

- Detainees who have not been formally charged, and are waiting to be charged for the commencement of their trial

- Detainees whose trial has begun but has yet to come to a conclusion whereby the court makes a finding of guilt or innocence; and
- Detainees who have been convicted but not sentenced

From all the above definitions a summary could be made that a pre-trial detainee can be described as individual who has come in conflict with the law, has been arrested by law enforcement agents, have been charged to court and is remanded in prison by the authority of the court. Such a person could still be under investigation, might have started appearing in court for trial but yet to be convicted of any offense by any court of law.

The issue of pre-trial detainees is a global phenomenon. According to the 2016 report, of International Centre for Prison Studies (ICPS) shows that more than two and a half million people are held in penal institutions throughout the world as pre-trial detainees' /remand prisoners. The report further states that the number or proportion of pre-trial/remand detainees in Africa is high. This was confirmed as eight African countries namely Libya (90%), Benin (75%), Democratic Republic of the Congo (73%), Nigeria (72%) Central Africa Republic (70%) Liberia (68%), and Guinea and Togo (65%) were listed among the 23 countries in the world with the highest proportion of the total prison population in pre-trial/remand imprisonment (ICPS, 2016). Pre-trial detention can provide a window into the effectiveness and efficiency of a particular states criminal justice system as well as its commitment to the rule of law. A high percentage of pre-trial detainees in African countries is an indication that the criminal justice system is not effective and may not be discharging its duties as expected.

There have been some ways to measure the scope of pre-trial detention. According to Open Society Foundation (2011:21), these measures include; (i) its duration, the number of days' people spend in detention, (ii) total number of individuals in detention, (iii) percentage of all detainees who are in pre-trial stage and (iv) rate calculated as the number of pre-trial detainees per 100 000 of the general population. For the purpose of this study three of the ways to measure the scope of pre-trial detainees namely, total number of individuals in detention; percentage of all detainees who are in pre-trial detainees; and rate calculated as the number of pre-trial detainees per 100 000 of the general population will be employed to describe the scope of pre-trial detention in African countries. These three measures out of four are being used because it is difficult if not impossible to employ the fourth measure which is the duration, the number of days spent in detention. This scope will be too wide for this study and the researcher also doubts the possibility of prison authorities releasing such information.

Without any doubt, there are various consequences of pre-trial detention. Some of these consequences were identified by Open Society Foundations (2008), and are listed below

- Exposure to institutional violence, initiation rituals, and gang violence, which contribute to the significantly higher homicide and suicide rates among pre-trial detainees compared to sentenced prisoners;
- Contracting infectious diseases due to overcrowded and unsanitary conditions- diseases which the detainees carry back to their home communities when they are released;
- Social stigmatisation, including estrangement from family and community, and difficulty finding and retaining employment;
- Increased propensity for crime since those who experience prolonged pre-trial detention are most likely to commit a criminal offense after release and their children are also more likely to commit a criminal offense after release and their children are also most likely to commit a criminal offense later in life; and,
- Losing their employment during excessive periods of detention and watching their families slip deeper into poverty, hunger, homelessness (Open Society Foundations,2008).

In some cases, pre detainees were often detained for a very long time and some are freed from the charges and no compensation is paid. This is inhumane

In the next section, this study presents a comprehensive data on the population of pre-trial detainees in African countries.

6.3 Population of pre-trial detainees in prisons in Africa countries

This section highlights the total number of pretrial detainees in prisons in Africa, date data was obtained, the percentage of the total prison population, and pre-trial/remand population per 100,000. This information is presented in tabular form and a further description of the table is made.

Table one: Showing African countries, the total number of pre- trial detainees, date data was obtained, percentage of total prison population, and pre-trial/remand population per 100,000

	Number in pre-trial/ remand imprisonment	Date	Percentage of total prison population	Pre-trial/remand population rate per 100 000 of national population
Northern Africa				
Algeria	3 763	31.12.2013	6.2%	10
Egypt	6 392	31.12.2006	9.9%	9
Libya	5 569	.5.2014	c.90%	89
Morocco	31 850	31.12.2014	42.5%	93
Sudan	3 893	.2013	20.4%	10
Tunisia	12 790	.10.2014	54%	115
Western Africa				
Benin Republic	5 174	6.10	74.9%	58
Burkina Faso	3 351	31.12.15	44.4%	18
Cape Verde	399	2012	29.6%	81
Cote d' Ivore	c 4 740	30/11/2015	c.39%	c.22
Gambia	203	.2014	22.2%	11
Ghana	2 184	.11.2016	16.4%	8
Guinea(Rep. of)	1 690	.2013	65%	c.14
Liberia	1 428	.12.2015	67.9%	31
Mali	2 748	.2014	52.8%	17
Mauritania	724	1.10.2014	41%	18
Niger	5 116	.11..2015	60%	26
Nigeria	45 263	31.3.2016	71.7%	25
Senegal	4 383	30.10..2016	46.5%	28
Sierra Leone	1 894	27.10.2015	54.3%	30
Togo	2 931	.2014	65.2%	42

Central Africa				
Angola	10 749	31.12.2014	47.1%	44
Cameroon	15 853	31.12.2014	61.2%	69
Central African Republic	384	.11.2011	70.2%	-
Chad	3 064	31.12.2011	63.4%	25
Congo(Rep of)	c744	08.09.2014	c60%	16
Democratic Republic of Congo	c15 000	.2015	c73%	c 21
Gabon	c2250	.2015	66.7%	c121
Sao Tome	4	15.9.2015	2.2%	2
South Sudan	1 878	28.9.2015	28%	15
Eastern Africa				
Burundi	c 4925	8.10.2015	56.1%	44
Comoros	42	31.12.2015	29%	5
Djibouti	c 300	31.12.2015	c50%	c34
Ethiopia	16 585	2011/2012	49%	19
Madagascar	c9921	2013	53%	c43
Malawi	1 958	.10.2015	16.1%	11
Mauritius	820	14.11.2016	37.1	64
Mozambique	5 074	.2014	32.9%	20
Rwanda	3 699	.12.13	6.8%	31
Seychelles	119	23.8.2014	15.5%	130
Tanzania	c 17 200	.10.2015	c.50%	32
Uganda	23 020	.7.2014	55%	61
Zambia	3 950	17.9.2013	23.2%	28
Zimbabwe	3 224	9.1.2015	17.1%	25
Mayotte(France)	124	1.10.2016	46.6%	51
Reunion(France)				
Southern Africa				
Botswana	970	31.1.2015	24.5%	10

Lesotho	404	30.08.2014	19.5%	18
Namibia	234	10.4.2015	24.5%	47
South Africa	45 257	31.3.2016	27.9%	81
Swaziland	619	.3.2012	18.1	51

Source: International center for prison studies

The result is shown in table one above shows the following:

In Southern African countries, Botswana has 970 pre-trial detainees representing 24.5% of the total prison population and 10 per 100,000 of their national population; Lesotho with 400 pre-trial detainees representing 19.5% of the total prison population and 18 per 100,000 of the national population; Namibia has 234 pre-trial detainees representing 24.5% and 47 per 100,000 of the national population; South Africa has 45,257 pre-trial detainees representing 27.9% of the total prison population and 81 per 100 000 of the national population; and Swaziland having 619 pre-trial detainees representing 18.1% of the total prison population and 51 per 100 000 of the national population.

The table further revealed that in Eastern African countries, Burundi has 4925 pre-trial detainees representing 56.7% of the total prison population and 44 per 1000 000 of the national prison population; Comoros has 42 pre-trial detainees representing 29% of the total prison population and 5 per 100 000 of the national prison population Djibouti has 300 pre trial detainees representing 30% of the total prison population and 34 per 100 000 of the national prison population; Ethiopia with 16 585 pre-trial awaiting detainees representing 14.9% of the total prison population and 19 per 100 000 of the national population. Kenya has 21 888 pre-trial detainees representing 40% of the total prison population and 48 per 100 000 of the national population. Madagascar has 9921 pre-trial detainees representing 53% of the total prison population and 43 per 100 000 of the national population; Malawi has 1 958 pre-trial detainees representing 16.1% of the total prison population and 11 per 100 000 of the national population. Mauritius has 820 pre-trial detainees representing 37.1% of the total prison population and 64 per 100 000 of the national population. Mozambique has 5 074 pre-trial detainees representing 32.9% of the total prison population and 20 per 100 000 of the national population. Rwanda has 3 699 pre-trial detainees representing 6.8% of the total prison population and 31 per 100 000 of the national population. Seychelles has 119 pre-trial detainees representing 15.5% of the total prison population and 130 per 100 000 of the national population. Tanzania has 17 200 pre-trial detainees representing 50% of the total prison population and 32 per 100 000 of the national population. Uganda has 23 020 pre-trial detainees representing 55% of the total

prison population and 61 per 100 000 of the national population. Zambia has 3 950 pre-trial detainees representing 23.2% of the total prison population and 28 per 100 000 of the national population. Zimbabwe has 3 224 pre-trial detainees representing 17.1% of the total prison population and 25 per 100 000 of the national population. Mayotte(France) has 124 pre-trial detainees representing 46.6% of the total prison population and 51 per 100 000 of the national population. Reunion (France) has 155 pre-trial detainees representing 14% of the total prison population and 17 per 100 000 of the national population.

Furthermore, the table showed the data of pre-trial detainees in Central African Countries: Angola has 10 749 pre-trial detainees' representing 47.1% of the total prison population and 44 per 100 000 of the national population. Cameroon has 15 853 pre-trial detainees representing 61.2% of the total prison population and 69 per 100 000 of the national population. The Central Africa Republic has 384 pre-trial detainees representing 70.2% of the total prison population t per 100 000 of the national population is not given. Chad has 3 064 pre-trial detainees representing 63.4% of the total prison population and 25 per 100 000 of the national population. Congo (Republic of) has 744 pre-trial detainees representing 60% of the total prison population and 16 per 100 000 of the national population. The Democratic Republic of Congo has 15 000 pre-trial detainees representing 73% of the total prison population and 21 per 100 000 of the national population. Gabon has 2250 pre-trial detainees representing 66.7% of the total prison population and 129 per 100 000 of the national population. Sao Tome e Principe has 4 pre-trial detainees representing 2.2% of the total prison population and 2 per 100 000 of the national population. Sudan has 1 878 pre-trial detainees representing 28% of the total prison population and 15 per 100 000 of the national population

In addition, the data of pre-trial detainees in prisons of West African countries is presented thus: Benin Republic has 5 174 pre-trial detainees representing 74.9% of the total prison population and 58 per 100 000 of the national population. Burkina Faso has 3 351 pre-trial detainees representing 44.4 % of the total prison population and 18 per 100 000 of the national population. Cape Verde has 399 pre-trial detainees representing 29.6% of the total prison population and 81 per 100 000 of the national population. Cote d 'Ivoire has 4 740 pre-trial detainees representing 39% of the total prison population and 22 per 100 000 of the national population. The Gambia has 203 pre-trial detainees representing 22.2 % of the total prison population and 11 per 100 000 of the national population. Ghana has 2,184 pre-trial detainees representing 16.4 % of the total prison population and 8 per 100 000 of the national population. The Guinea Republic has 1 690 pre-trial detainees representing 65% of the total prison

population and 14 per 100 000 of the national population Liberia has 1 428 pre-trial detainees representing 67.9% of the total prison population and 31 per 100 000 of the national population Mali has 2 748 pre-trial detainees representing 52.8% of the total prison population and 17 per 100 000 of the national population. Mauritania has 724 pre-trial detainees representing 41% of the total prison population and 18 per 100 000 of the national population. Niger has 5 116 pre-trial detainees representing 60% of the total prison population and 26 per 100 000 of the national population. Nigeria has 45 263 pre-trial detainees representing 71.7 % of the total prison population and 25 per 100 000 of the national population. Senegal has 4383 pre-trial detainees representing 46.5% of the total prison population and 28 per 100 000 of the national population Sierra Leone has 3 351 pre-trial detainees representing 54.3 % of the total prison population and 30 per 100 000 of the national population. Togo has 1894 pre-trial detainees representing 54.3 % of the total prison population and 30 per 100 000 of the national population.

Finally, data on pre trial detainees for North African countries were also presented and is summarised thus Algeria with 3 763 pre-trial detainees representing 6.2% of the total prison population and 10 per 100 000 of the national population. Egypt has 6392 pre-trial detainees representing 9.9% of the total prison population and 9 per 100 000 of the national population. Libya is reported to have 5 569 pre-trial detainees representing 90% of the total prison population and 89 per 100 000 of the national population. Morocco with 31,850 pre-trial detainees representing 6.2% of the total prison population and 42.5 per 100 000 of the national population. Sudan with 3 893 pre-trial detainees representing 20.4% of the total prison population and 10 per 100 000 of the national population and Tunisia having 12 790 pre-trial detainees representing 54% and 115 per 100 000.

A further review of the table shows that Nigeria has the largest number of pre-trial detainees with pre-trial detainees of 45,263 closely followed by South Africa with 45,257 and Morocco coming third with pre-trial detainee population of 31 850. The countries with least pre-trial detainees are Seychelles with a population of 119; Comoros of 42 and Sao Tome e Principe. However, Libya ranked highest with 90% in terms of the percentage of pre-trial detainees to the total prison population, with Benin Republic having 74% and Democratic Republic of Congo with 73%. The countries with least percentage of pre-trial detainees compared to the total prison population are Algeria (6.7%), Namibia (6.6% and Sao Toe e Principe.

To further highlight the pre detainees in Africa prisons a ranking of the countries and the pre detainee percentage is presented in the table below Highest to Lowest - Pre-trial detainees/remand prisoners

Table two showing a ranking of African countries and the pre detainee percentage from highest to lowest -

Rank	Country (Title)	Pre-trial Detainees
1	Libya	90
2	Benin	74.9
3	Democratic Republic of Congo (formerly Zaire)	73
4	Central African Republic	70.2
5	Nigeria	69.9
6	Liberia	67.9
7	Gabon	66.7
8	Togo	65.2
9	Republic of Guinea	65
10	Chad	63.4
11	Cameroon	61.2
12	Congo (Brazzaville)	60
12	Niger	60
14	Burundi	56.7
15	Sierra Leone	54.3
16	Uganda	54.2

17	Tunisia	54
18	Madagascar	53
19	Mali	52.8
20	Tanzania	50
20	Djibouti	50
22	Angola	47.1
23	Mayotte (France)	46.6
24	Senegal	46.5
25	Burkina Faso	44.4
26	Morocco	42.4
27	Mauritania	41
28	Kenya	40.4
29	Cote d'Ivoire	39
30	Mauritius	35.1
31	Mozambique	32.9
32	Cape Verde (Cabo Verde)	29.6
33	Comoros	29
34	South Sudan	28.9
35	South Africa	27.9
36	Botswana	24.5
37	Zambia	23.2
38	Gambia	22.2

39	Sudan	20.4
40	Lesotho	19.5
41	Swaziland	18.1
42	Zimbabwe	17.1
43	Malawi	16.1
44	Seychelles	15.5
45	Ghana	15.1
46	Ethiopia	14.9
47	Reunion (France)	14
48	Egypt	9.9
49	Rwanda	6.8
50	Algeria	6.7
51	Namibia	6.6
52	Sao Tome e Principe	2.2

Source: International centre for prison studies

6.4 Case Studies of conditions of pre-trial detainees in prison in some Africa countries

This section will highlight the detention conditions of pre-trial detainees in Egypt, Kenya, Mozambique, Zambia and Zimbabwe measuring the condition of detention of pre-trial detainees with the provision of the Nelson Mandela Rules, Luanda Declaration and the constitution of the mentioned African countries.

Section C Rule 111 to 120 of the Nelson Mandela Rules deals with the minimum treatment that should be accorded, pre-trial detainees. Part 1 section 4 of the Luanda Declaration stipulates the rights of an arrested person(ACHPR,2014:4-9) while Part 6 specify conditions of detention in police custody and pre-trial detention ACHPR,2014:21-22).

6.4.1 Mozambique

This study relied mostly on the findings of a study conducted by Lorizzo (2012). The study was designed to assess the experience of pre-trial detainees in Maputo with special attention to the condition of detention and access to legal representation. The reliance on the findings of Lorizzo (2012) was predicated on the fact that there is a paucity of literature specifically on pre-trial detainees in Mozambique.

6.4.1.1 Legal provisions regarding pre-trial detainees in Mozambique:

The new constitution of the Republic of Mozambique (Constituicao da Republica de Mozambique, CRM) which was enacted in 1990 and amended in 2004 recognises the individual rights and freedom that had been denied under 1975 constitution. CRM Article 64 stipulates conditions for pre-trial detention thus:

1. Pre – trial detention shall be permitted only in cases provided for by the law, which shall determine the duration of such imprisonment.
2. Citizens held in pre-trial detention shall, within the period fixed by law, be brought before the judicial authorities who alone shall have the power to decide on the lawfulness and continuation of the imprisonment.
3. Everyone deprived of their liberty shall be informed promptly and in a way that they understand the reasons for their imprisonment or detention and of their rights.
4. The judicial decision by which an imprisonment or detention is ordered or maintained shall be communicated at once to a relative.

According to Lorizzo (2012), the creation of Criminal Investigation Police (Policia de Investigacion Pic) places detention centers of pre – trial detainees under the Ministry of the Interior while all the other prisons remained under the Ministry of Justice. In 2002, following the recommendations of the Kampala Declaration on Prison Conditions in Africa, Mozambique adopted the prison policy n. 65/2002. However, the Mozambican policy contains detention of pre – trial detainees (Resolution n. 65 of 27 August 2002).

6.4.1.2 Findings on pre-trial detention in Mozambique

Stipulated time to be charged after arrest: Article 64 of the CRM requires that a person has the right to be brought before the investigative judge and to be charged or to be informed of the reason for the detention not later than 48 hours after the arrest. The term can be extended

to a maximum of five days in case of flagrante delicto, failing which the person must be released.

Despite this provision of article 64 of the CRM, the study revealed that none of the 20 participants of the study was charged to court within the stipulated time of 24 hours (Lorizzo, 2012:33). This is a violation of the law of Mozambique and constitutes an abuse of the right of the detainees.

Regarding the pre-trial custody time limit, Article 308 of the Criminal Procedure Code (Codigo de Processo Penal, CPP) states specific limits for the duration of the pre-trial detention, the study found that provision of this CPP has not been implemented. The study revealed that all participants of the study had been detained for longer than allowed by law. The study further showed that six out of the twenty participants of the study had been in prison for more than one year while one had been detained for around three years (Lorizzo, 2012:33). This is against the law of Mozambique, an abuse of human rights and negates the Nelson Mandela rule

In addition, on the right to be informed Rule 1 and 54 of the Nelson Mandela Rule states that detainees must be treated with dignity and informed about their rights and rules of the prison. This information about their rights and the rules of the prison is expected to be given in writing and/or orally upon admission. In the course of the study, some of the participants disclosed that if this information is given at all, it was provided verbally. Others mentioned that a prison official clarified the rules and rights of the institution, some of the participants claimed they could not remember being informed by prison officials of their rights. However, there was a consensus among the participants of the study that the information given to them at the point of admission into prison focuses on the rules and prison disciplinary requirements rather than on their rights. This is a negation of the Nelson Mandela Rule.

Concerning the right to adequate standards of living Rules 9-16, 21 and 41 of the Nelson Mandela Rule as well as Article 24 of the Luanda Declaration place an obligation on states to ensure that people in custody are treated with humanity and fairness. The study revealed that the prisons under study did not comply with the provisions of these articles as pre-trial detainees were kept in prisons that did not treat prisoners with humanity and fairness. For instance, Lorizzo (2012:34). This was captured better by the statement of one of the participants ‘as paredes esta cansadas’ [*The walls are tired*] ‘(Quote from the interview with a detainee in the Central Prison, November 2011). Although roofs were not leaking, walls are cracked. In addition, there was an inadequate supply of bed and beddings in the prisons in Mozambique.

Majority of the participants claimed that they do not have beds and mattresses hence some of them sleep on blankets and mats, some of the participants use thin mattresses provided by the prison administration, while others are using personal mattresses provided by their families. In another prison, there were not enough beds for all the prisoners and many detainees slept on the floor between or under the beds, and in the corridor between the bunks. This condition did not comply with Article 25 g of the Luanda Declaration as well as the various provisions of the Nelson Mandela rules in relation to the minimum standard living requirements.

The study further revealed that though Article 62 of the 2004 constitution of Mozambique guarantees legal assistance to accused persons. However, most of the participants said that they had not received any legal counsel since their arrest; other persons said that they have paid some lawyers, four had recently assistance from lawyers, and four had recently received assistance from lawyers of the Institute for Legal Assistance (Instituto de Patronico e Assistencia Juridica, IPAJ). A lack of legal representation for pre-trial detainees is a violation of Mozambican constitution as well as a negation of international standards on legal representation of pre-trial detainees.

Similarly, there are provisions in different articles for the pre-trial detainees should have access to adequate food among these are Rules 20 and 87 of the Nelson Mandela Rules and article 25 g of the Luanda Declaration. All these articles prescribing the right of prisoners to adequate nutrition and water. However, the study found out that while food is not adequate in terms of quality and quantity, the food is not disturbed at regular times and the actual diet consists of a combination of porridge for breakfast, and rice, maize, beans or peanut sauce for lunch or dinner (Lorizzo, 2012:34). For instance, the finding of the study indicated that in a particular prison, three meals per day are served in one of the prisons, in another prison detainee receive only breakfast in the morning and a '*reinforced lunch*'.

Likewise, the study indicated that pre-trial detainees' access to potable water is limited and inadequate. The participants in the study indicated that water ran at designated times of the day between 07h00 and 09h00 and between 17h 00 and 18h00. Access to water is mainly during the day. The sanitation situation is also reported to be deplorable as the facilities such as showers; toilets are grossly inadequate (Lorizzo, 2012:34).

Despite the Nelson Mandela rule 22 which sets medical standards for prisons, the study of conditions of pre-trial detainees revealed that the medical care in these prisons is grossly inadequate. One of the participants of the study was quoted as saying that medical services are

‘a *part mais chata aqui dentro*’ medical services are ‘a *parte mais chata aqui dentro*’ [the most difficult thing in the prison]. This amounts to cruel, inhuman and degrading treatment as well as an infringement on the right to life. This type of treatment also negates Article 25 g of the Luanda Declaration.

Though the findings of the study cannot be generalised considering that only two prisons in Maputo, the state capital of Mozambique were used for the study; also taking into cognisance that only 20 participants formed the sample for the study. However, the study gave us an insight into the kind of conditions that pre-trial detainees live in prisons in Mozambique. Based on these findings there is an urgent need for government of Mozambique to take urgent steps to ameliorate the sufferings of the pre-trial detainees as they are still presumed to be innocent until they are convicted, even if and when they are convicted they need to be treated as human beings as the philosophy behind imprisonment is not punishment but rehabilitation.

6.4.2.1. Zimbabwe

6.4.2.2. Legal provision on the rights of pre-trial detainees

The Constitution of Zimbabwe includes a Declaration of Rights, which guarantees fundamental rights to all persons, including those accused of committing criminal offenses and awaiting trial (Chapter 4 of Zimbabwe Constitution). Rights specific to pre-trial detainees include the right to liberty and the right of the protection of the law, which includes the right to a fair trial within a reasonable period and the right to innocence until proven guilty as well as freedom from torture or cruel, inhuman treatment or punishment.

Specifically, Section 50 (5) of the constitution states that ‘Any person who is detained, including a sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including opportunity for physical exercise and the provision, at State expense, of adequate accommodation, ablution facilities, personal hygiene, nutrition and, appropriate reading material and medical treatment’.

The following section will review existing conditions in prisons with regards to this constitutional provision and the Nelson Mandela Rules as well as the Luanda Declaration.^{al} In an in-depth study to assess the condition of pre-trial detainees and the state of detention facilities across Zimbabwe by Zimbabwe Lawyers for Human Rights (ZLHR), The Law Society of Zimbabwe (LSZ) AND Open Society Initiative for Southern Africa (OSISA), the conditions in pre-trial detention were found to be despicable and inhumane, and amounted to violations of the rights of the detainees (ZLHR/OSISA, 2013). The description of pre-trial detention is a

negation of Nelson Mandela Rule 1, Article 24 of the Luanda Declaration which stipulates that detainees must be treated with respect for their inherent dignity and to is protected from torture and other cruel, inhumane or degrading treatment or punishment.

The in-depth study which was conducted in eight prisons in Zimbabwe reported that remand prisons were experiencing overcrowding with 30% of the 17 000 prison inmates in the selected prisons being pre-trial detainees.

In addition, the study revealed that there is an inadequate sleeping arrangement due to the overcrowding nature of the prisons under investigation (ZLHR/OSISA.2013). It was further reported that detainees scramble for limited resources such as space to relax or sleep. This finding was corroborated by a former inmate who was detained in one of the prisons *'Bedtime yakapenga (is the most difficult period) ...we were so many that we slept facing one side and had to turn on the other side at once during the night'*. This is inhumane, degrading treatment and amounts to torture. This type of treatment does not meet international standards, negates the provision of article 25 g of the Luanda declaration as well as Nelson Mandela Rule 21.

Likewise, the study revealed that the toilet and bathing facilities were inadequate in the remand prisons. It was reported that detainees had to resort to buckets due to the absence of adequate toilet facilities in most cells. It was also observed that while some cells have toilets, the facilities are usually over burdened and considered dehumanising as they were not secluded. The detainee's right to privacy is infringed upon. Aside from the infringement of privacy rights, the inadequacy of toilet facilities could lead to an outbreak of epidemic and spread of diseases such as cholera. This is contrary to the constitution of Zimbabwe which makes provision for adequate toilet facilities for every citizen including pre - trial detainees. This finding does not comply with Article 25g of the Luanda Declaration as well as Nelson Mandela Rule 15 and 16. Regarding being held in detention for more than necessary, the OSISA study which was conducted in 2013 showed that some detainees have been detained for more than one year on remand due to delays in the completion of cases; there are cases of detainees spending more than 12 months without appearing in court. Irinews (2004) reported that in 2003, Chief Magistrate Samuel Kudya raised the issue of those on remand saying that some of them were *"spending up to four years awaiting trial"*. In 2006, Justice Rita Makarau described Zimbabwe's prison conditions as *'embarrassing and disturbing'* because she had visited Harare Central Prison and met ten people who had been incarcerated for up to ten years without trial. She quite rightly said, *"We have no excuse for this delay - it is imperative prisoners who deserve to be released should not stay here."*(BBC(UK),2006).

From the above findings, it is evident that nothing has really changed since 2003, the same situation of detainees spending more time awaiting trial persists even as The Freedom House 'Freedom in the World 2016' report, states that lengthy pre-trial detention remains a problem in Zimbabwe. This is a negation of the principle of innocence until proven guilty. In addition, lengthy pre-trial is one of the major causes of overcrowding in most prisons not only Zimbabwe but other countries in Africa

Furthermore, on the medical care services to pre-trial detainees, the findings indicated that there were no modern facilities or medical equipment in prisons hence it is difficult if not impossible for most prisons to conduct initial health screening (ZLHR/OSISA, 2013:40). This constitutes a great health challenge due to overcrowding nature of the prisons and the practice of homosexuality which could lead to the spread of communicable diseases such as HIV/AIDS and TB amongst others. The study further revealed that as a result of prolonged detention without trial, detainees were predisposed to the risk of developing hypertension and stress, and skin diseases through the sharing of clothes, blankets amongst others. Inadequate medical facilities for pre-trial detainees is unconstitutional, constitute human rights abuse as well as degrading and inhumane treatment which does not meet international standards.

Regarding nutrition for pre-trial detainees, Section 50 of the constitution of Zimbabwe makes provision for adequate nutrition for pre-trial detainees, Article 25 of the Luanda Declaration and the Nelson Mandela Rule 22 which stipulate that adequate provision of nutritious food and potable water be made for pre-trial detainees; however, this is not the case in reality. ZLHR/OSISA (2013:41) pointed out that many of the pre-trial detainees in most of the detention centers in Zimbabwe were not being provided with food that constitutes balanced diets. According to the finding of the study, the diet mainly served in detention centers comprise of sadzax (maize), cabbage and beans. The prisoners lamented lack of meat in their diet. Aside from the lack of nutrition, the prisoners also complained about the inadequate quantity of food they are being served.

As one young offender said *'The food in prison is bad and inoshata [tasteless]. Have you ever eaten cabbages with no cooking oil and porridge with no sugar? And not eating that food can get you in trouble, zvinorovesa [one can get beaten up as a result]'*.

However, the study revealed that prisoners could receive food from their family members. A lack of nutritious food and inadequate quantity of food served is not good enough for pre-trial detainees especially for those who have medical conditions. Since food is a source of energy, pre-trial detainees who do not have required meals in quality and quantity would be weak and susceptible to malnutrition and kwashiorkor, hence prone to sicknesses and disease. This

inadequacy is a flagrante disregard for the constitution of Zimbabwe, a non-compliance of the Luanda Declaration and Nelson Mandela Rules.

The Constitution of Zimbabwe includes a Declaration of Rights, which guarantees fundamental rights to all persons, including those accused of committing criminal offenses and awaiting trial. Rights specific to pre-trial detainees include the right to liberty and the right to the protection of the law, which includes the right to a fair trial within a reasonable period and the right to innocence until proven guilty as well as freedom from torture or cruel, inhuman or degrading treatment or punishment. According to Moshenberg (2014), pre-trial detainees in Zimbabwe prisons in some cases have waited for two months for their trials while others have waited eleven years a remand prisoner. In 2006, the then Judge President of the High Court of Zimbabwe, Justice Rita Makarau, expressed concern over the conditions of pre-trial detainees who were being held at one of Zimbabwe's largest remand prisons – Harare Central Prison. During a visit to the prison, Justice Makarau met a number of pre-trial detainees, including at least ten who had been held on remand for ten years without trial. She described their plight as “*embarrassing and disturbing*” and stressed that the courts had “no excuse for this delay. It is imperative prisoners who deserve to be released should not stay here (Sokwanele,2009) .

From the above findings from literature review, it is evident that the conditions of detention of pre-trial detainees in Zimbabwe does not meet international standards and does not conform to the country's constitutional provisions regarding pre - trial detainees. One striking thing about the situation of the pre- trial detainees is that the situation has been like that for some time and nothing seems to have been done to improve the conditions of pre – trial detainees. The irony of it all is that most of these pre- trial detainees do not appear in court for trial. Efforts should be made by the operators of the criminal justice system in Zimbabwe to effect necessary changes to alleviate the suffering and inhumane treatment of pre-trial detainees in Zimbabwe.

6.4.3.1. Conditions of pre - trial detainees in Egypt

Article 93 of the Egyptian Constitution provides that the state is committed to the agreements, covenants, and international conventions of human rights that were ratified by Egypt including:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Universal Declaration of Human Rights
- African Charter on Human and People's Rights
- The International Covenant On Civil And Political Rights

Likewise, the Egyptian 2014 Constitution provides among others:

The right to be protected from torture and abuse (Article 55)

‘All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities. Any violation of the above is a crime and the perpetrator shall be punished under the Law. The accused possesses the right to remain silent. Any statement that is proven to have been given by the detainee under pressure of any of that which is stated above, or the threat of such, shall be considered null and void’.

However, despite Egypt's international human rights obligations and its own domestic regulations, the condition of pre-trial detainees do not meet international standards. For instance, pre-trial detainees are locked up in prison cells that are often dirty, filled with cockroaches and ants, most of the facilities are largely overcrowded and subject to extreme temperature due to poor ventilation (Mazer,2015). Locking up people up in filthy prison cells does not preserve human dignity. Hence, a violation of Article 55 of the Egyptian constitution. In addition, the condition of detention of pre-trial detainees does not comply with Article 25 g of the Luanda Declaration as well as the Nelson Mandela Rule 1 Aside from not meeting international standards such treatment is inhumane, degrading treatment and amount to torture

With regards to international standard of separation of categories, that is separating or not locking up pre – trial detainees with convicted persons, prison authorities in Egypt do not comply with the provision as stipulated in Nelson Mandela Rule 112 and Article 26 of the Luanda Declaration. These two articles stated clearly that pre detainees should not be locked up with convicted persons. This non - compliance is evident in pre – trial detainees being held in the same detention facilities including individuals with radical ideologies. According to Robert F Kennedy Human Rights (2015:3) a former political detainee, Mohammed Soultan confirmed that pre - trial detainees, charged prisoners, pending trial, prisoners sentenced to life imprisonment and prisoners sentenced to death were all detained in his prison ward. This none categorisation of prisoners in Egyptian prisons could lead to various forms abuse and radicalisation of detainees. This is unacceptable.

Although the Egyptian constitution stipulates that an arrested person should be brought before the investigating authority within 24 hours of arrest, however, this is not the case in practice.

For instance, Loubawi, a doctor, and Grayson, a University Professor were detained for 51 days in Egypt without charge; likewise, Khaled Al Qazzaz a Canadian resident was detained without charge for 558 days without charge. This form of detaining without trial is an abuse of rights of such individual and a flagrant disobedience to the constitution of Egypt. In addition, this does not meet international standards

Kalin (2015) declares that medical neglect is increasingly common and many pre - trial detainees do not receive treatment as required and when detainees are taken to the prison hospital, care is limited and resources are limited. This is not in compliance with the Article 25g of the Luanda Declaration and Nelson Mandela Rule 24. Again, this is not in consonance with international standards and constitutes abuse on the right of detainees to health care as well as abuse to the right to life because if a detainee is sick and he does not receive adequate medical attention, this could lead to unnatural death.

The detention condition of pre- trial detainees in Egypt is a concern to all stakeholders because the number of pre -trial detainees has exponentially increased due to political crises in recent times in Egypt. For instance, Human Rights Watch (2014), reported that Egypt has been noted for mass detention and illegally holding hundreds including at least 264 children in central security forces camp where many detainees were subjected to torture including such sexual abuse.

6.4.3.1. Pre - trial detainees in Kenya

Legal provisions for people who are detained in Kenya

Article 51 of the Constitution of Kenya affirms that a person who is detained, held in custody or imprisoned retains all the rights and fundamental freedoms in the Bill of Rights not incompatible with such detention, custody or imprisonment. Such persons are entitled to petition for an order of habeas corpus.

In addition, The Persons Deprived of Liberty Act (No. 23 of 2014) details the rights of arrested persons, those held in lawful custody and those detained or imprisoned in execution of a lawful sentence.

The rights of detained persons or those under custody, detention or imprisonment include the following:

1. The right to be treated in a humane manner and with respect for inherent human dignity;

2. The right to have a reasonable opportunity to secure personal property within their possession not subject to exhibition as evidence;
3. The right to be notified of legal aid where it is available and its use;
4. The right to the due process of law, including the right to be promptly informed in a language the person understands of the reasons for their deprivation of liberty and of the charges, if any, preferred against them;
5. The right to be informed of their constitutional rights and guarantees relating to personal liberty and other fundamental rights and freedoms and arising constitutional limitations;
6. The right to access the services of an interpreter or another intermediary during detention and legal proceedings;
7. The right to communicate with their family or another person of one's choice;
8. The right not to be compelled to make a confession;
9. The right not to be compelled to plead guilty to any charge preferred against them;
10. The right to communicate privately with their advocate;
11. The right to communicate with any person of his or her choice including upon being held in custody, detention or imprisonment or upon transfer to another institution;
12. The right to inspect and verify the receipt book listing the person's property and the right to have such property restored to the person upon his or her release;
13. The rights not to be subjected to an unreasonable body search and for such search to be undertaken by a person of the same sex;
14. The right to be entitled to a nutritional diet, taking account of the nutritional requirements of children, pregnant women, lactating mothers and any other category of persons whose physical conditions require a prescribed diet;
15. The rights to be provided with beddings sufficient to meet the requirements of hygiene and climatic conditions, to be provided with clothing sufficient to meet requirements of hygiene, climatic conditions and special needs on account of gender and religion, and adequate sanitary material for women;

16. Entitlement to medical examination, treatment and health care, including preventive health care, on the recommendation of a medical officer;
17. The right to confidentiality regarding his or her health status save in relation to infectious or communicable diseases which should be disclosed to the official in charge of the institution;
18. The right not to be subjected to treatment that unreasonably violates the person's religious practices and convictions;
19. The rights to access educational opportunities and reading material that is beneficial to rehabilitation and personal development, and to reasonable access to news media; and
20. The right not to be subjected to forced labour

6.4.3.1. Findings on conditions of pre-trial detainees in Kenya

6.4.3.1.2 Living conditions

The Peoples Deprived of their Liberty Act 2014 Article 5 (1&2), Nelson Mandela Rule 1 and Article 24 of the Luanda Declaration states that detained persons are to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment. However, this is not the situation regarding pre-trial detainees in Kenya. According to a report by Kenya's Independent Policing Oversight Authority (IPOA, 2014:5-7), detention centers were in very deplorable conditions, overcrowded and children are locked up in the same cell with adults. This amounts to inhumane, degrading and cruel treatment and does not meet international standards treatment,

6.4.3.1.3 Separation of categories

The Peoples Deprived of their Liberty Act 2014 Section II Article 12: 3 a & b stipulates that there must be a separation of categories. Likewise, Nelson Mandela Rule 112 and Article 26 of the Luanda Declaration specify that there should be a separation of categories. However, there is no total compliance with these provisions. According to the Kenya Audit of some prisons in Kenya, it was observed that there was compliance with the provision of the Act. However, there were exceptions in some prisons such as Garissa, Menu, and Wundanyi where pre-trial detainees are locked up with convicted person. The non-compliance in these prisons is attributed to the overcrowding prevalent in such prisons. Another report by IPOA (2014) indicated that in detention centers, children and adults were locked up in the same cells. Non-compliance with separation of categories predispose detainees to all forms of abuse and does

not comply with international standards. The excuse of overcrowding cannot hold water because there are pre-trial detainees who have been in detention for longer periods than required by law. Some of these detainees could have spent longer terms than prescribed by law if they have been convicted at the courts. Therefore, the prison authorities in Kenya should expedite action and release those that are unjustly detained so that there could be a separation of categories. Nevertheless, there were no reported cases of locking male and female detainees together.

6.4.3.1.4 Medical services

Part II Article 15 of The People Deprived of Their Liberty Act 2014, and Nelson Mandela Rule 24 as well as Article 25g of the Luanda Declaration makes provision for adequate medical care for anyone in detention. The findings from the audit report of detention centres in Kenya indicated that medical care to pre-trial detainees varies from one prison to the other. For some prisons medical doctors visit the prisons on a daily basis, some prisons such as Langata, Nakuru, Shimo La Tewa and Wundanyi claimed that the dispensaries are well stocked with medicines hence they are able to provide adequate medical care for detainees. In some other prisons which include Garissa, Kissi, Makureni, Meru, and Voi, the medical care for pre-trial detainees is inadequate. This is due to poor supplies of medicine and lack of medical equipment to provide basic medical services to pre-trial detainees. In some cases, sick detainees are referred to public hospitals. The report further stressed that access to special medical services such as dental and psychiatry is more restricted. Dental and psychiatric services are not available within the prison. The nearest place of consult for prison in Menu is about 52 kilometres from the prison facility while the farthest is Embu County prison which is about 152 kilometres away from the prison. Inadequate medical care for pre-trial detainees does not conform to the provision of the laws of Kenya, the Luanda declaration and the Nelson Mandela Rules

6.4.3.1.5 Beddings

The Person Deprived of their Liberty Act (2014) Part II Article 14 (1) sets a standard in respect of beddings *‘A person deprived of liberty shall be provided with beddings sufficient to meet the requirements of hygiene and climatic conditions’*. This is in addition with the Luanda Declaration Article 25 g and Nelson Mandela rule 21. The audit report concluded that the provision of beddings appears to be highly problematic. The report was quoted as saying *‘No beds were provided at any of the prisons except at the Langata Women prison where bunks*

beds and mattresses are provided. At some prisons detainees are provided only with one blanket and no mattress. At Meru, three quarters of the detainees share a mattress; at Nakuru and Voi prisons, two detainees share a mattress'. The report further observed that this practice varies significantly and the reason for such variation are not clear. The bedding situation of pre-trial detainees is not in compliance with the provision of the People Deprived of their Liberty Act (2014) as well as the Luanda Declaration Article 25(g). In addition, this does not abide with the Nelson Mandela Rule 21. This treatment is inhumane, degrading and amount to torture. The consequences of not providing beddings and having to share beddings with others are enormous. This could lead to sexual abuse, transmission of communicable diseases as well as skin diseases.

6.4.3.1.6 Water

With regards to the provision of potable water, the Nelson Mandela rule 22 (2) stipulates that 'drinking water shall be available to every prisoner whenever he or she needs it'. Provision of water is also a fundamental human right guaranteed by the Kenyan constitution and an affirmation of human dignity as specified in the Luanda Declaration. The audit report of some detention centres in Kenya indicated that provision of clean water was not reported to be a significant problem at any of the prisons surveyed. However, only one prison, Nakuru where it was observed that the supply of water could be irregular at times. Equally, it was noted that not all prison cells have water taps inside and prisoners have to rely on containers to store water when they are locked up. This does not comply with the Nelson Mandela rule 22 (2) which states that 'drinking water shall be available to every prisoner whenever he or she needs it' (UNODC, Nelson Mandela Rules, 2015:7). In a situation when a pre-trial detainee needs water after lock up and there is no water tap in the cell is a deprivation. Furthermore, storing of water in containers could lead to water-borne diseases and could breed violence in a situation where someone makes use of the water of another person.

6.4.3.1.7 Food

According to Part II article 13 of The Person Deprived of their Liberty Act (2014) 'A person deprived of liberty shall be entitled to a nutritional diet approved by competent authorities', similarly Nelson Mandela Rule 22 (1) 'Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served it' (UNODC, The Nelson Mandela Rules, 2015:7)' and Article 25(g) of Luanda Declaration specifies that pre-trial detainees must be

provided with adequate nutritious food (ACHPR,2014:22). However, this is not the case among detainees in Kenya Prisons. This position was affirmed by Korir (2012) in her book titled 'Diet in the Worm: Quality of catering in Kenya Prisons'. In the book, the author critically examined 'the quality of catering in Kenya Prisons. According to her, the findings were shocking and challenging; *'the food was lacking in both the nutritive value as well as aesthetic appeal'*. A survey on the food condition in 2011 indicated that 80% of the prisoners interviewed were of the opinion that the food was generally bad or bad (Korir, 2011). Some detainees also complained of receiving low quality of food. Review of literature indicated that food suppliers to prisons in Kenya may not have been paid by relevant authorities. For example, there were news reports that food suppliers to Shima La Tewa have not been paid for four years and are owed Ksh 480million (US\$ 4.7 million). It was also reported in the media in 2015 that Nakuru prison owed suppliers of foodstuffs some Ksh 100 million (U. S \$988 000) (Business Daily,2015). The food situation in Kenya Prisons is pathetic. Inability of the prison authorities in Kenya to provide nutritious food to detainees is a negation of the various legal stipulations. It amounts to degrading and inhumane treatment. It could also be described as a form of torture which makes pre - trial detainees susceptible to diseases.

With regards to the time pre-trial detainees spend in detention, the NCJA audit report observed that the period of pre-trial detention is usually lengthy, the report further stated that the lengthy pre-trial detention has continued to be a problem in Kenya's criminal justice system. Lengthy pre-trial detention does not meet international standards and amounts to an abuse of the right to liberty of such detainees. In addition, the audit report shows that some defendants served more than the statutory term for their alleged offense in pre-trial detention (NCJA, 2014:62). Excessive pre-trial detention threatens people's basic right to liberty and dignity. Once more, this is a cruel, degrading, inhumane treatment and amounts to torture. For a detainee to spend more time than the statutory term for an alleged offense, is a crime against humanity and is totally unacceptable. Some questions that agitate my mind include; what compensation will such detainee get from the state? What value has the detention added to the life of such detainees? What skills would such detainees have acquired in detention that would enable such detainee reintegrate successfully into the society?

Though the researcher relied mainly on the audit report which was designed and initiated by The National Council on Administration of Justice (NCAJ) to provide a comprehensive analysis of the criminal justice system in Kenya, the independence of the report cannot be guaranteed. It is doubtful as most of the findings of the audit report painted a very good picture

of the conditions pre-trial detainees in Kenya. In addition, there is a paucity of literature on pre-trial detainees in Kenya. Other literature from independent sources such as NGOs, academic and research articles on this subject matter could have afforded the researcher an opportunity to verify some of the claims of this audit report. One wonders if a government institution will carry out an audit and give a report that would portray the government as in bad light.

Even at the audit report conducted by a government agency, the condition of pre-trial detainees in Kenya does not in any way conform to international standards and is a clear indication of the flaws inherent in the administration of the criminal justice system of the country. Like in some other African countries, a lot of reforms need to be carried out regarding the conditions of pre-trial detainees.

6.5. Pre-trial detainees in Zambia

6.5.1 Legal framework for pre-trial detainees

Zambia has ratified a number of international treaties that regulate pre-trial detainees' rights, these include the:

- International Covenant on Civil and Political Rights (ICCPR)
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- International Covenant on Economic Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)
- African Charter on Human and Peoples' Rights (African Charter)
- African Charter on the Rights and Welfare of the Child (ACRWC)

Aside from international treaties, Zambia also has national laws and rules that protect detainees, these laws include the:

- Constitution of the Republic of Zambia
- Penal Code
- Criminal Procedure Code Act (CPC)
- Prisons Act
- Juveniles Act and,

- **Prison Rules**

The Constitution of Zambia which is the supreme law of the country protects the rights of pre-trial detainees. Specifically, Part III of the constitution of Zambia offers protection for the fundamental rights and freedoms of the individual. For instance, Article 13 of Zambia's constitution protects the right to personal liberty, Article 15 guarantees freedom from inhuman treatment, and Article 18 secure protection before the law, that is if any person is charged with a criminal offence, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

6.5.2 Findings on pre-trial detainees in Zambia

6.5.2.1 Quality of infrastructure and building:

Nelson Mandela Rule 1 (UNODC, 2015:2) and Article 24 of the Luanda Declaration states that 'detained persons are to be treated with respect for their inherent dignity, and to be protected from torture and other cruel, inhumane or degrading treatment or punishment (ACHPR, 2014: 22). Muntingh (2011:82) reports that the physical conditions of buildings in Zambia prisons are in poor condition and are characterised by dirty, dilapidated, cracked walls, leaking roofs, and poor ventilation. The dilapidated nature of physical infrastructure of buildings in prison in Zambia was also noted in the 2004 and 2005 reports by the ZHRC on prisons in Lusaka and Central Provinces. This shows that the poor condition has been in existence over a period of time and nothing has been done about it. It shows a case of neglect. Locking up detainees in prisons that are dirty, dilapidated, cracked walls, leaking roofs and poor ventilation amounts to torture, cruel, inhumane and degrading treatment and does not respect for their inherent dignity. This treatment does not meet international standards. However, the prison building at Livingstone was recently renovated and is reportedly in good condition

6.5.2.2 Separation of categories

Nelson Mandela Rule 11(2), Article 26 of the Luanda Declaration specifies that there should be a separation of categories. In addition, section 60(2) of Zambia's Prisons Act states that convicted and unconvicted prisoners of each sex shall be divided into different categories. In spite of all these provisions, it was observed that the Zambia Prison Service has not complied with the requirements of separation of categories of detainees. For example, the 2008 report of ZHRC indicated that the Zambia Prison Service has failed to separate detainees on remand from convicted persons, and minors from adults (ZHRC Annual Report, 2008). Similarly, a visit to one of the prisons in Zambia by ZHRC in 2011, showed the same pattern of locking

juveniles with adults (Human Rights Commission, 2011). Likewise, the findings of a study conducted by OSISA revealed that most prisons except Kabuwa and Solwezi do lock up convicted persons with pre-trial detainees in Zambia prisons (Mutingh,2010:87). This is in violation of Nelson Mandela Rule 112, Article 26 of the Luanda Declaration and section 60 (2) of the Prison Act

6.5.2.3 Complaints mechanism:

Rule 15 of the *Zambian Prison Rules*, makes provision for detainees to make formal complaints. According to the rule '*the Officer in Charge shall ensure that prisoners who have complaints or applications to make are allowed to make them to him personally*'. Likewise, Nelson Mandela Rule 56 & 57 makes provision for detainees to lodge complaints about their detention condition and their rights to prison authorities. In Zambia prisons, Matakala (2010: 59) indicated that pre detainees have opportunities to lodge complaints on a daily basis and the complaints are recorded in the complaints register. Detainees are entitled to lodge complaints on a prescribed form and without censorship with external authorities that include the central prison authorities, judicial authorities, national human rights institutions or any other body concerned with their rights. However, research shows that even if detainees have the opportunity to make formal complaints to the prison service, most of them prefer not to complain for fear of victimisation (Matakala,2010: 59). Though on the surface, the prison authorities appear to comply with the Rule 15 of the *Zambian Rules* and Nelson Mandela Rule 56 & 57, not much seems to have been done to alleviate the concern of detainees with regard to victimisation. In addition, not much information is available in respect of the outcome of various complaints lodged by detainees.

6.5.2.4 Inspections: Nelson Mandela Rule 83 -85 makes provision for external and internal supervision of prisons and for inspectors to make their findings public it (UNODC, Nelson Mandela Rules, 2015: 25). The ZHRC has the power under its enabling legislation to exercise unhindered authority to visit prisons or any place of detention, including police cells, with or without notice (ZHRC Annual Report, 2009:15). According to Muntigh (2010: 89), most of the prisons in Zambia are inspected regularly, with the exception of Ndola. The reason for this is not known. It was also not clear from the information available about who conducts the inspections, but it is known that the ZHRC visits prisons to hear complaints from prisoners. Though on a general note the Zambia Prison Service appears to meet international standard regarding inspection of prison facilities, however, the question is of what impact has the

inspection been on the conditions of pre-trial detainees in Zambia? It is also on record that the findings of such inspections which are made public have brought to the fore knowledge of the poor condition of Zambia prisons nothing much has changed for the better in Zambia prisons.

6.5.2.4 Medical care

Nelson Mandela Rule 24-27, as well as Article 25 g, makes provision for adequate medical care for anyone in detention. Section 18 of the Prisons Act also provides for the examination of every prisoner on admission to and before discharge from a prison for purposes of ascertaining the detainee's health. Rule 24 of the Prison Rules provides for every prison to have a properly secured prison clinic

The medical care of pre-trial detainees is inadequate this is predicated on some facts which include: there are not much qualified medical personnel and equipment, as well as non-availability of medicine in most prisons. Nevertheless, pre-trial detainees are permitted to consult their own private medical doctor or dentist at their own expenses. The study further indicated that no screening on health status examination is done at prisons in Zambia. This is a negation of the provisions of the Nelson Mandela rules, the Luanda declaration and the provision of the Zambia Prison Rules. In addition, nonscreening of incoming detainees poses a great health challenge to the individual as well as to the rest of detainees in such facility.

6.5.2.5 Beddings

The Luanda Declaration Article 25 g and Nelson Mandela rule 21 specifies that adequate beddings for pre-trial detainees. Prisoners in Zambia prisons were not supplied with beds and mattresses that are available are too few and much worn out. Beddings are not supplied at the majority of prisons. In some case, it was reported that beds were removed to make more space for the increasing number of prisoner (Mutingh, 2010:85). Again, this does not meet international standards and it is a negation of the Nelson Mandela rule 21 and the Article 25 g of the Luanda declaration.

6.5.2.6 Food and drinking water

According to Nelson Mandela Rule 22 (1) 'Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served' and Article 25(g) of Luanda Declaration specify that pre-trial detainees must be provided with adequate nutritious food, In addition, Zambia's Prison Rules, 'Prison Rations: Part I, the Prisons Act, Act No. 56 of 1965, as amended

by Act No. 14 of 2000, CAP 97 of the Laws of Zambia also state that prisoners' food must include meat, fish, sugar, salt, fresh fruits and fresh vegetables.

Despite all these provisions, the quality and quantity of food served to detainees is inadequate. Likewise, is a doubt on whether a meal plan is actually followed. Review of literature revealed that in 2008, the ZHRC found that inmates were given two meals per day, prepared by inmates assigned to work in the kitchen. But then in 2010, the HRW, PRISCCA and ARASA study found that prisoners were served one meal a day (HRW, PRISCCA and ARASA, 2010). This meal is served to prisoners around 15:00 hours every day and comprises nshima (maize meal) beans, and kapenta (small fish) (Institute for Security Studies, 2009). The human rights organizations (HRW, PRISCCA & ARASA, 2010), further established that sometimes the prison service does provide two meals a day, but very rarely are prisoners treated to breakfast.

In addition, pre-trial detainees are permitted to receive food from their families. Access to water seems to be inadequate. Access to water is usually through central taps and in some prisons such as Livingstone and Mongu, there are no taps in the cells. This does not meet international standards and it's a negation of the Nelson Mandela Rules as well as the Luanda Declaration.

6.6 Chapter Summary

In this chapter, the study considered a category of prisoners often called pre-trial detainees. Some definitions of pre detainees were given and the researcher endeavoured to define pre - detainees in his own terms based on the various definitions. The chapter also considered the population of pre-trial detainees in all the African countries where data is available and the study showed that South Africa the highest number of pre –trial detainees with a population of 45,527; Morocco, 31,850 and Uganda with 23, 020. With regards to the percentage of pre-trial detainees in relation to the total prison population, pre –trial detainees in Libya constitute 90%, 74.9% in Benin Republic and 73% in Democratic Republic of Congo. Regarding the percentage in relation to 100,000 of the total population of the countries, Seychelles was 130/100 000; Gabon, 121/100 000 and Tunisia, 115/100 000.

Furthermore, the chapter examined the conditions and treatment of pre - trial detainees in some African countries. The countries are Mozambique, Egypt, Kenya, Zambia, and Zimbabwe. The Nelson Mandela Rules, Luanda Declaration and domestic laws of some countries was used as a benchmark to determine if the treatment and conditions of pre-trial detainees these countries meet international standards. From the review of few literatures available specifically on

conditions and treatment of pre-trial detainees, the study found out that in all the indicators such as accommodation, feeding, clothing, medical care and length of time spent in detention, none of the African countries reviewed met international standards.

The study revealed among others that pre-trial detainees are not provided decent accommodation in conformity with human dignity. Most of them are cramped in overcrowded cells. Likewise, the sanitary situation is inadequate while the medical in most of the prisons is non-existent. The quality and quantity of food was insufficient and does not meet minimum nutrition requirements. Another major finding of this chapter is that some pre-trial detainees spend a long time in detention more than they ought to have stayed even if they were convicted. The long-staying of pre –trial detainees is one of the reasons for overcrowding being experienced in prisons in Africa.

It must be pointed out that the data presented may not be current as at 2017 because the number of pre-trial detainees keeps on increasing on a daily basis. The criminal justice system of most African countries do not see detaining of suspects as a last resort as prescribed by international organisations.

In addition, there is a paucity of research specifically designed and conducted on pre – trial detainees. I am of the opinion that more studies should be conducted to highlight the challenges of pre-trial detainees in prisons in Africa. The findings of these studies to be conducted could be the basis to design frameworks and formulate policies that could lead to an improvement in the plight of pre-trial detainees. The findings of the studies could also lead to reforms in the criminal justice system and lead to the decongestion of our prisons in Africa.

In all the treatment and conditions of pre-trial detainees in prisons of African countries do not meet international standards, it a gross abuse of the fundamental rights of the pre – trial detainees. If the conditions of pre – trial detainees are a measure of civilisation, then African countries are still in the Stone Age as Winston Churchill said *‘You measure the degree of civilisation of a society by how it treats its weakest members’*.

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Chapter 7

Prisoners with Special Needs

Introduction

Prisoners are often referred to as a vulnerable group. This is predicated on the fact that the freedom and liberty of prisoners are curtailed and that they are placed under the authority of another group of people, and in most cases, this happens in an environment which is not often open to public scrutiny. The effect of this loss of liberty and freedom is that there have been proven cases of abuse of power by the officials under whose care the prisoners are kept (UNDOC, 2009). In addition, prison conditions are harmful to both physical and mental well being of prisoners due to the adverse conditions prevailing in most prisons. These conditions include overcrowding, violence, isolation from the community, inadequate prison activities and health care.

However, there are certain groups among the prison population that are in more vulnerable positions and by the virtue of their condition require additional care and protection. These categories of prisoners may experience increased suffering as a result of inadequate facilities and lack of specialists available to address their special needs. Studies have shown that there is an increase in the number of these categories of prisoners all over the world. For instance, UNODC (2009:4) reports that foreign national prisoners constitute over 20% of the prison population in European Union countries and a few countries of South Asia and Middle East. According to the UNODC report, studies undertaken in a number of countries indicated that 50-80% of prisoners have some form of mental disability, while racial and ethnic minorities represent over 50% of the prison population in some jurisdictions.

The UNDOC (2009:4) identified eight categories of prisoners with special needs. They include prisoners with mental health care needs, prisoners living with disabilities, ethnic and racial minorities and indigenous people, foreign national prisoners, Lesbian, Gay Bisexual and Transgender (LGBT), older prisoners, prisoners with terminal illness and prisoners under a death sentence. For this study, five categories of prisoners with special needs in some African prisons was explored. In addition to this, the study examined women prisoners and children living with their mothers in prison. The focus of this chapter was to explore the population of prisoners with special needs, facilities available for these categories of prisoners, challenges of these categories of prisoners and to investigate whether the living conditions of these prisoners

with special needs meet international standards using the Nelson Mandela Rules and the Luanda Declaration. In the case of women prisoners, the Bangkok Rules was used as a benchmark to observe if the treatment meets international standard. In the course of this study which was conducted through literature search, it was observed that there is a dearth of information on prisoners with special needs in Africa. However, Sereria (2014:219) reports that there is an increase in the number of prison inmates with physical disabilities in Kenya. It is expected that this study will add to the few literatures available on prisoners with special needs in Africa

7.1 Prisoners with mental health care needs

Mental health problems are often more apparent in prisons than in the community (Australian Institute of Health and Welfare (AIHW) (2010). The prevalence of mental disorders among prison is significantly higher than the general population globally (Hassan, Birmighnham & Harty, 2011; Naidoo, 2012). Prisons are places where living conditions can be both physically and psychologically demanding. Concerns about separation from family and friends and future uncertainties are made worse by poor living conditions in most prisons. For individuals in prison custody, the World Health Organisation (WHO, 2007) notes that '*prisons are bad for mental health*'. WHO (2007) further stated that one of the major problems in prisons is the mental health assessment and treatment. In essence, most prisons do not have the wherewithal either qualified personnel, facilities and infrastructure to assess and treat prisoners with mental health care needs. Correctional employees are often not trained to identify or assist inmates who experience psychiatric symptoms (WHO, 2007). In fact, not much attention has been given to mental health needs of prisoners. This was confirmed by Wolff, Plemmons, Veysey & Brandli (2002), that reported that it is only recently that medical and correctional communities realise that the extent of mental diseases and other related problems such as substance abuse as well as chronic and communicable diseases are increasing in the correctional system. The implication of this is that over a period of time, prisoners with mental health needs have not been catered for, thereby making their conditions to deteriorate, consequently causing them additional punishment, posing danger to themselves and the prison community as a whole. This amounts to an infringement on the right of this category of prisoners to adequate medical care.

Not many studies regarding the mental health of prisoners have been conducted. The few studies of mental disorders in prison or jail populations that have been done in Africa were conducted in South Africa, Zambia, Nigeria, and a few other African countries.

This section will present the findings of a literature search on mental health situation among prisoners in some African countries. These countries include Ghana, Egypt, Zambia, Ethiopia, South Africa and Nigeria. The findings will be measured against the Nelson Mandela Rules 109 and 110 and the Luanda Declaration Article 33

Nelson Mandela Rule 109 which states that

1. Persons who are found to be criminally responsible, or who are later diagnosed with severe mental disabilities or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangement shall be made to transfer them to mental health facilities as soon as possible.

2. If necessary, other prisoners with mental disabilities and or/ health conditions can be observed under the supervision of qualified healthcare professionals.

3. The healthcare service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment it' (UNODC, The Nelson Mandela Rules, 2015:37).

Luanda Declaration Article 33 Persons with Disabilities

a. General Principles

for the purpose of these guidelines, persons with disabilities include those have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others

ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.

iii. Every person with a physical, mental, intellectual or sensory disability deprived his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.

iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programmes and another service available to others, including voluntary engagement in activities and community release programmes. Consideration for alternatives to detention should be given within a framework that includes reasonable accommodation (ACHPR, 2014:26).

7.1.1 Prisoners with mental health care needs in Ghana

In Ghana, not many studies have been conducted regarding mental health conditions of prisoners. In fact, the Director of Accra Psychiatry Hospital, Dr. Akwasi Ossei submits that there is a need for research in the area of the mental health situation of prisoners (Ossei, 2012). One wonders how the Ghana Prison Service intends to address the mental health situation in Ghana prisons without research that could generate data.

In addition, the total number of prisoners with mental health problems is not known. This is predicated on the fact that the problem and level of mental health problems in Ghana prisons are poorly documented (Ossei, 2012). This lack of data on prisoners with mental health problems in Ghana is confirmed by Ibrahim, Esena, Aikins O'Keife & McKay (2015) as they confirmed that there is no known research on the number of incarcerated Ghanaians with mental health conditions. A lack of data on prisoners with mental health conditions in Ghana indicates a lack of concern for the well-being of prisoners with mental health challenges. It looks difficult if not impossible to address the various challenges of prisoners with mental health challenges without adequate data.

Furthermore, Ofori (2010) submitted that there is no capacity to deal with mental health challenges within the prisons in Ghana. This could be explained in the national context as there is an acute shortage of mental health services in Ghana. According to a media report by a national daily in Accra, The Chronicle 'of a total of about 15 psychiatric specialists that the country can boast of, only 4 are currently at post; there are 600 psychiatric nurses instead of over 3 000 needed; 115 community psychiatric nurses instead of over 3 000 required andonly 3 psychiatric hospitals are operating in the country' (The Chronicle 6 June 2011). In capturing the pathetic mental health care situation in Ghana with regards to qualified mental health practitioners, Osei was quoted as saying that '*the existing number of psychiatrists in the country (Ghana) gives the ratio of 1 psychiatrist to 1.7 million people*' (The Chronicle 6 June 2011). With this low ratio of number of available psychiatrist to the population of Ghanians,

it will be difficult if not impossible for prisoners in Ghana with mental health conditions to get required mental health care needs.

Again, the mental health condition in Ghana prisons was 'noted with concern' by The Committee against Torture as there were reports of '*severe overcrowding, lack of qualified staff and poor material and hygienic condition in the psychiatric facilities*'. The committee also expressed deep concern on the situation of persons admitted by reason of court order, who have been allegedly been abandoned for years (CAT/C/GHA/CO,2011 para.17).

Likewise, Osei (2012) in an interview with Amnesty International described some of the challenges of mental health care in prisons to include lack of properly trained staff, lack of financial support, congestion and overcrowding (AI, 2012:24). Although literature indicates that prisoners with mental health could be treated in Accra Psychiatric hospital, medical health practitioners do not visit the prison. One could imagine the type of treatment that will be available for prisoners with a mental health challenge in view of the inadequate practitioners and insufficient infrastructure.

The consequence of lack of mental health practitioners in Ghana prisons suggests that the mental health status of prisoners to be detained in Ghana prisons will not be ascertained on admission at the prisons. This implies that prisoners could be wrongly classified as having mental problems and thereby isolating such prisoner while those with the mental challenge are not identified and treated, hence walking around posing a safety risk to themselves and to other prisoners. The Amnesty International observed this wrong classification in a visit to one of the prison cells in one of the prisons in Ghana, where a prisoner who had leprosy was described as 'mad' by a prison official and was kept in isolation(AI,2012).

From the reviewed literature, the mental health condition in prisons in Ghana does not meet international standards. The lack of treatment, lack of qualified mental health practitioners' amounts to cruel, degrading and inhumane treatment as well as an infringement on the right of prisoners to adequate health care as well as the right to life.

7.1.2 Prisoners with mental health care needs in Egypt

In Egypt, there is not much literature on the mental health situation of prisoners. According to El Gilany, Khater, Gomaa, Hussein & Hamidy (2016), there is a scarcity of data and information about prisoner's health care. Hamedy, Ekalia, ElGillany, Abdi-Fattah, Khater, Gomma & Hussein (2015) noted that data about the situation of the mentally ill offenders is still not clear. El Gilany et.al. (2016) reports that aside from a few small-scale studies, the magnitude of psychiatric disorders among prisoners on a national level is unknown.

In a study described as the first national study on psychiatric disorders among prisoners in Egypt, El Gilany et .al (2016) found that the prevalence of psychiatric disorders among prisoners in a sample of 1 350 adult prisoners across 16 prisons showed an overall point relevance of psychiatric disorders of 22%. The veracity of the claim that the study is the first national survey of psychiatric disorders among prisoners in Egypt cannot be verified. The study also has some limitations that include the validity of the consent given by respondents and the responses to the questionnaires under prison conditions. Another limitation of the study is the uncertainty of the external validity of the results. The prevalence of psychiatric disorders among prisoners in Egypt may be underestimated. In addition, the representativeness of the sample cannot be guaranteed because the sample of prisons and prisoners were provided by a government agency, the Ministry of Interior. Lastly, as a cross-sectional study, the authors were not able to make causal inference on whether being in prison causes psychiatric disorders since there was no psychiatric screening prior to imprisonment.

In an earlier study, Abuzaid (1995) found all that the overall prevalence of psychiatric disorder in El- Kananter prison in Egypt was 15.3%. This study was conducted in just one prison hence the findings could not be generalised. More so, it has to be a long time the study was conducted. It cannot be used as a baseline for prisoners in Egypt taking into cognisance the upsurge in the number of detainees in Egypt in recent times due to the political instability in the country. However, the lack of data on the number and the treatment available to prisoners is against international standards.

7.1.3 Prisoners with mental health care needs in Ethiopia

The mental health situation among prisoners in Ethiopia is also unknown. Likewise, there is a dearth of literature regarding the mental health conditions of prisoners in Ethiopia. According to Diachew, Fekadu, Kisi, Yigaw & Bisetegen (2015), there is no accurate count of persons

with mental disorders who are incarcerated in Ethiopia. Equally, there is a scarcity of information about the health conditions of prisoners in Ethiopia.

However, in a cross-sectional study, Dachew et. al. (2015) found that the prevalence of psychological distress among prisoners was found to be 83.4%. The finding of this study cannot be generalised as representing the mental health condition of the entire prison population. Similarly, the interview was used as a tool for obtaining data, the fact that the interview was conducted in prisons, the finding of the study may be prone to social durability bias.

7.1.4 Prisoners with mental health care needs in Zambia

The mental health situation in prisons in Zambia is not different from other Africa countries highlighted above. Regarding the number of prisoners having mental health conditions in Zambia prisons, there is no data. According to Jacobson, Sabuni&Talbot (2017) there are no systematic data available on the number of people with disability within the criminal justice system of Zambia. This could be explained in the national context of the number of people with mental health conditions in Zambia, as there are no official estimates of the number of people with mental health concerns in Zambia as a whole and nor is there a system for the routine collection of data ((Mental Disability Advocacy Centre (MDAC) & Mental health Users Network of Zambia (MHUNZA), 2014).

This study during literature search found a few studies of the mental health of offenders in Zambia. For example, Nseluke & Siziya (2011) reported a high prevalence of mental health problems among inmates in Lusaka Central Prison. Mweene &Siziya (2016) also concluded that there is prevalence of mental illness in Mulcobeko Maximum Security Prisons. It need be pointed out that the findings of the authors from Zambia cannot be generalised as being representative of the total prison population in Zambia, though the findings gave us a clue to the mental health situation in the two prisons.

In an assessment report of the situation of prisoners with mental health issues in Zambia targeting four prisons including the forensic ward at the Chainmama Hills Hospital by Global Initiative of Psychiatry and other organisations, Global Initiative on Psychiatry (2011) indicated that mental health care, detection, and treatment are generally unavailable in these prisons.

Though there is provision for people who are alleged to have committed criminal offenses and who are judged to be of '*unsound mind*' to be detained at forensic psychiatric facilities at

Chainmama Hills hospital and Livingstone prisons, however, the capacity at these facilities are grossly inadequate. For instance, Chainmama Hills hospital has one male ward with a capacity of 20 beds and a further 3 female forensic beds. At the Livingstone prison, there are 30 forensic beds (MDAC & MHUNZA, 2014). Despite the fact that the number of prisoners with mental conditions is not known, it is crystal clear that the number of beds available at the 2 forensic hospitals is grossly inadequate and this amounts to denial of the rights of prisoners with a mental health condition to adequate treatment.

Findings of review of literature also show that psychiatrists visit prisons in Lusaka every few months and prescribe medications. The definition of few months is not known. At what intervals are these visits? What happens to prisoners with mental conditions in between the visits? Why will psychiatrists visit only prisons in Lusaka? What about other prisons outside Lusaka?

The prison authorities have no form of support for prisoners with mental conditions. This was revealed by representatives of the judicial department of the Ministry of justice to MDAC & MHUNZA (2014) that they do not have any system in place to support people with mental health issues within the judicial system. This is not in conformity with international standards as it negates the Nelson Mandela rule, the Luanda declaration and the UN Convention on the Rights of the Disabled Persons Rights of 2010 and the domestication of this by the Zambian government through The Persons with Disabilities Act of 2012.

7.1.5 Prisoners with mental health care needs in Nigeria

The issue of mental health in Nigeria generally leaves much to be desired. For instance, WHO-aims (2006) stated that there is considerable neglect of mental health issues in the country (WHO-AIMS, 2006:5). Likewise, is the fact that information about mental health services in Nigeria is hard to come by. The country seems not to have any clear-cut policy on mental health. According to a Consultant Psychiatrist Adeoye Oyewole, the only available mental health document in Nigeria is of colonial origin. WHO-AIMS reported that the mental health policy document in Nigeria was formulated in 1991 and since its formulation, no revision has taken place and no formal assessment of how much it has been implemented has been conducted.

With this background of the mental health situation in Nigeria, it is going to be foolhardy to expect any meaningful provision for prisoners with mental health challenges. For example, there are no psychiatrists in the employment of the Nigeria Prison Services. This was confirmed

by the NHRC audit report of prisons in 2012 that prisons in Nigeria have no qualified psychiatrists or the facility to take care of their special needs. In another visit by NHRC officials in 2014 to some prisons, the NHRC 2014 report reaffirmed this fact as there were no psychiatrists in the prisons they visited.

In addition, there is a paucity of literature on prisoners living with mental health challenges. The few literature such as Agbahowe (1988), Abdulmalik (2014) and Agboola, Bablola & Udofia (2017) have only examined the aspects of mental health challenges amongst prisoners in some selected prisons. From literature search, there is no official data regarding the number of prisoners in Nigeria having mental health challenges. However, the study was able to get some few data, for instance, a prison audit report by Nigeria Human Rights Commission (NHRC) in 2012 revealed that some of the prisons audited across the country had 621 mentally ill detainees in detention. The report gave a breakdown of prisoners with mental health problems on a zonal basis thus: in the North East Zone 4 out of 37 prisons had 20 mentally ill detainees in prison; in the North West Zone there were 50; while in the South-South Zone there were 79. Also, in the South West Zone, the number of prisoners with mental health problems were 121; 289 were found in the South East Zone, with Enugu having 136 (NHRC, 2012).

In another visit to prisons 3 prisons in 2014 by NHRC, it was reported that there were 3 mentally ill in Kuje prisons, 22 inmates in Sokoto prison and 6 inmates in Kebbi prison (NHRC, 2014: 137, 147 & 153). One wonders how this figure was arrived at as there were no qualified psychiatrists to assess the mental health condition of prisoners in Nigeria. Prisoners with mental disabilities remained incarcerated with the general prison population. The U.S report 2016 on Human Rights claimed that generally, prisons in Nigeria made few efforts to provide mental health services or other accommodations to prisoners with mental disabilities (U.S human rights reports, 2016). The few efforts made to provide mental health services by prison authorities in Nigeria reported by the U.S report made are not specified.

This study also presents the findings of some of the few available literature on mental health challenges and offenders in Nigeria. Agbahowe Ohaeri, Ogunlesi, & Osahon (1998) in a study of 100 prison inmates in Benin prisons revealed that the rate of psychiatric disorder among the sample of the study was fairly high. The researchers did not specify the frequency or how high the percentage was. In another study by Armiya'u., Obembe, Audu., & Afolaranmi (2013) using a cross-sectional survey of 608 inmates of Jos Maximum Prison as the sample, the study explored the prevalence of psychiatric morbidity among prison inmates and found that the

psychiatric disorders among the sample were 347 representing 57%. Abdul Malik, Adedokun, & Baiyewu, (2014) in their own study conducted among 725 awaiting trial men in a prison in Ibadan found that prevalence of mental illness was 56.6%. This prevalence rate is high

It is worthy of note to mention that the findings of these studies cannot be generalised taking into account that each of the studies was conducted in a single prison and the sample size was small compared to the total prison population in Nigeria. It is instructive that there is a need to conduct a national survey of prisoners with mental health challenges in Nigeria.

From the information obtained from available literature on mental health of prisoners in Nigeria, case of neglect could be established and this does not conform to international standards as well as negation of the letters and principles of the Mandela Rules, Luanda declaration and constitute an infringement of the rights of prisoners in Nigeria to mental health care.

7.1.6 Prisoners with mental health care needs in South Africa

White Paper on Corrections

11.7 Offenders with mental illness

11.7.1 It is the ideal that correctional centers should not accommodate mentally – ill offenders and that they should rather be diverted to institutions with the necessary knowledge to deal with them. Sentenced offenders who are thought to be mentally ill must be treated in accordance with Mental Health Act. It is necessary that the decision to subject an offender to the examination provided for in the Mental Health Act is not made by a Head of Correctional Centre or member of Management alone, but should be done on the basis of the psychiatric recommendation.

In South Africa, little is known about offenders with mental disorders in the correctional system although the Department of Correctional Services (2011:23) reports that these “*are issues receiving attention*”. However, it was reported by The South African Health News Service (2015) that there were 3, 755 prisoners with mental health disability as at February 2015. One wonders how this figure was arrived at as the Police and Prison Civil Rights Union (Popcru) states that prison warders are unable to distinguish between naturally violent inmates and mentally ill inmates as they receive no training in identifying mental illness. This submission was also corroborated by National Institute for Crime Prevention and Reintegration of Offenders (Nicro), a nongovernmental organisation providing comprehensive crime prevention

services across South Africa, that a number of inmates with mental illness could remain undetected in the system (The South African Health News Service,2014).

According to National Advocacy and Lobbying Manager Venessa Padayachee of Nicro, not much attention is being paid to mental health care needs of offenders in South Africa. She further indicated that correctional centers do not have the suitable facilities such as psychiatric services to support mentally ill inmates (The South African Health News Service,2014).

While the Department of Corrections claimed to be attending to the mental health challenges of offenders, it acknowledged that the mental health needs of awaiting trial prisoners – some 28% of the prison population – are unknown. According to the DCS spokesperson, Manelisi Wolela *'It is not possible to know how many awaiting trial detainees are in need of mental health care unless, on admission, they report or submit any form of proof that they are receiving treatment,'*. The meaning of this is that there are no assessment or screening conducted of persons to be detained in correction services of South Africa upon admission. Lukas Mutingh, a Professor at the Community Law Centre of the University of Western Cape submit that the offenders awaiting trial do not have access to a psychologist. He went further to state that *'if you are a short-term or sentenced prisoner, it is hard to access a psychologist. Only sentenced prisoners from two years and longer get a sentence.*

The spokesman of the DCS acknowledged the fact that there are no resident psychiatrists in Correctional facilities of South Africa but that the department makes use of private psychiatrist or those recommended by the Department of Health. Sukeriet.al (2016) reported that prisons in Eastern Cape Province do not have a mental health care service; only 2 out of 43 correctional centers in Eastern Cape Province report that a psychologist is consulted when needed, and that no correctional center has a resident or visiting psychiatrist. The implication of this is that the condition of prisoners with mental challenges will continue to worsen. And for those whose have psychological and emotional challenges as a consequence of imprisonment they would be left unattended and allowed their conditions to deteriorate. Inability to identify offenders with mental health challenges also predisposes detainees in various correction centers to danger.

The situation of offenders with mental health challenges in correctional facilities of South Africa do not meet international standards, it negates the Nelson Mandela rule, the Luanda declaration and it is an infringement of the fundamental rights of offenders. This type of treatment is inhumane, cruel and amounts to torture. There is an urgent need to attend to these challenges.

This study also discovered some of the research work conducted on mental health issues and offenders in South Africa. For instance, Naidoo & Mkzie (2011) found that there was a high prevalence of mental disorder among prison population in Durban, South Africa. In another study of prisoners in Eastern Cape Province correctional facilities of South Africa, Dogbe, Owusu- Dabo, Edusei, Plange-Rhule, Addofoh, Baffour- Awuah, Sarfo- Kantanka, Hammond & Owusu (2016) reported a high prevalence of mental disorder among prisoners.

In South Sudan, the National Prison Service is reported to be holding 162 inmates with mental disabilities determined by a judge to be sufficiently dangerous (and "mentally ill") (U.S human rights reports, 2016). In Kenya, Sereria (2014:246) reported that no data of prisoners with special needs including mental health could be obtained from the Kenya Prison Service because their statistics are scattered in different documents and in different offices of the Prison Department.

It is worthy to mention that the data provided by countries like Nigeria and South Africa cannot be said to be accurate because the prison staff are not trained on how to identify prisoners with mental health care challenges neither do they have required facilities to treat.

A lack of data portends that little or plan is made for prisoners that have mental health challenges. This is a negation of the right of every individual to have access to the highest attainable standard of physical and mental health. Siseria (2014:220-221) highlighted challenges of prisoners with mental health care needs to include, lack of qualified personnel in mental health (few health professionals are conversant with mental issues) only a few prisons have mental health facilities and that some cultures and communities associate mental health with witchcraft and resist medical help from conventional medicine.

From the literature search of a number of African countries regarding mental health care needs of offenders, certain commonalities were identified by this study. These are the facts that there is a dearth of literature, no national data, lack of qualified mental health practitioners, and lack of facilities to accommodate prisoners with mental health challenges. Others include lack of screening of prisoners, no support system for prisoners with mental health challenges, most countries do not have specific policies to address mental health needs of prisoners. One may conclude that the authorities concerned are neglecting some challenges that are prevalent in prisons all over the world. The current mental health care services situation at various prisons should be a concern to all because the prison condition has the potential to exacerbate mental health condition and to even trigger off mental health challenge. The safety of prisoners and staff is also at risk because a prisoner that is not assessed to have a mental condition may one

day become violent, cause harm to himself and others. Since the philosophy, underlying imprisonment is rehabilitation it is doubtful that any form of rehabilitation could take place in such a condition. It is worthy of note that there is a likelihood that the prisoner with mental health condition will be discharged one day into the society, thereby endangering the society as a whole.

It is also flagrant disobedience to various international and regional conventions as well as the laws of the various countries. Concerted efforts should be made by the government of African countries to address the mental health situation in our prisons.

7.2 Prisoners living with disabilities

Another category of prisoners with special needs is prisoners living with disabilities. According to United Nations Conventions on the Rights of Persons with Disabilities, ‘persons *with disabilities include those who have long-term physical, mental, intellectual and sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.* Imprisonment signifies an excessively harsh punishment for offenders with disabilities, often worsening their situation and placing a significant burden on the prison systems resources (UNDOC, 2009:44). Generally, the situation and special needs of these vulnerable prisoners have not attracted many studies by researchers in Africa. The rights of people living with disabilities are often infringed upon. They are often neglected and discriminated against. For instance, in most cases, they are not put into consideration in the provision of infrastructure for instance not many buildings have ramps.

Although figures relating to the number of prisoners with disabilities worldwide are scarce, there is a consensus among researchers that the prison population of people with physical disabilities is on the increase. An increase in the number of prisoners living with physical disabilities may be due to an increase in the number of people living with disabilities in most countries of the world and growth in the number of people living with disabilities who encounter the criminal justice system. Sereria (2014:219) who submit that the number of people living with disabilities is steadily increasing and more of them are finding themselves in prison supported this assertion. Another reason for the increase in prison population of people with physical disabilities is the significant increase of older prisoners in some prisons (UNDOC: 2009:44).

In this section, the study, present the findings of a literature search of little available literature on prisoners living with disabilities in some African countries.

Luanda Declaration Article 33 Persons with Disabilities

a. General Principles

i. for the purpose of these guidelines, persons with disabilities include those have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others

ii. The arrest or detention of a person with a physical, mental, intellectual or sensory disability shall be in conformity with the law and consistent with the right to humane treatment and inherent dignity of the person. The existence of a disability can in no case justify a deprivation of liberty. No person with a disability shall be deprived of his or her liberty unlawfully or arbitrarily.

iii. Every person with a physical, mental, intellectual or sensory disability deprived his or her liberty shall be treated with humanity and respect, and in a manner that takes into account the needs of persons with physical, mental, intellectual or sensory disabilities, including by provision of reasonable accommodation. The State shall uphold the right of individuals to informed consent with regard to treatment.

iv. States shall ensure the entitlement of persons with disabilities in custody or detention to be eligible for all programmes and another service available to others, including voluntary engagement in activities and community release programmes. Consideration for alternatives to detention should be given within a framework that includes reasonable accommodation (ACHPR, 2014:26).

Though the Nelson Mandela Rules did not specifically mention prisoners living with disabilities, there are however enough provisions to protect the rights of this category of prisoners. These include Rules 1 and 42.

7.2.2 Prisoners living with disabilities in Kenya

In Kenya, there is a statutory provision for persons living with disabilities who are in detention, a constitutional and statutory framework for arrested persons with disabilities in Kenya persons.

The rights of arrested persons set out in Article 49 set out of the Constitution by and large coincide with the ones established in the Luanda Guidelines. Established rights include the rights:

1. To be informed promptly, in language that the person understands, of the reason for the arrest, the right to remain silent;
2. To remain silent;
3. To communicate with an advocate and other persons whose assistance is necessary;
4. Not to be compelled to make any confession or admission that could be used in evidence against the person;
5. To be held separately from persons who are serving a sentence;
6. To be brought before a court not later than 24 hours after being arrested, or if the 24 hours ends outside ordinary court hours, or on a day that is not end of the next court day;
7. At the court appearance, to be charged or informed of the reason for detention continuing, or to be released; and
8. To be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

B. The People Deprived of their Liberty Act (2014) states that:

23(1) where persons with disabilities are deprived under any legal process, they shall be treated on an equal basis with others and shall be entitled to such guarantees as are in accordance with the Constitution and the law relating to the protection of the rights of persons with disabilities

(2) Persons with disabilities deprived of liberty shall be accommodated in facilities that adequately meet their personal needs, taking into account the condition and nature of their disability

(3) The competent authorities shall take appropriate measures to facilitate humane treatment and respect for the privacy, legal capacity and inherent human dignity of persons with disabilities deprived of liberty.

7.2.3 Findings

Like in other countries of the world, prisons in Africa countries do not have accurate data of prisoners living with physical disabilities. For example, in Kenya prisons, a report by African Policing Civilian Oversight Forum, (2017:16) indicated that data on prisoners (including pre-trial and convicted detainees) was inadequate and incomplete. From the information given by Kenya Prison Service (KPS) as of 15 February 2016 indicated that there were only 83 detainees with disabilities within Kenya's prisons. This total figure of 83 comprised of 51 inmates with

'amputated and lame limbs', 2'totally blind persons'; 14 'who was blind in one eye'; 4 'dumb and deaf' and 7'paralysed' inmates. The KPS report, however, put a caveat that the available data of prisoners living with disabilities varies from day to day because of new admissions and discharges. Seseria (2014:219) who stated that the number of offenders with disabilities is not known also confirmed the inaccuracy or non-availability of data on prisoners living with disabilities in Kenya Prisons.

Regarding infrastructure, prisoners living with physical disabilities in Kenya prisons constitute a major challenge for the management of Kenya Prison Service. This is predicated on the fact that there are no facilities for them (ACJA,2014:317). This same view was expressed by Seseria (2014:219) which confirms that facilities such as accommodation blocks, toilets, workshops, and offices were not designed and constructed with offenders with physical disabilities in mind. In another study, it was established that provision of reasonable accommodation for detainees with psychosocial and intellectual disabilities was limited (African Policing Civilian Oversight Forum, 2017:20).

Sereria (2014:219-220) identified challenges facing prisoners with disabilities in Kenya to include

- Lack of specialised facilities, equipment, and instrument for mobility
- Inaccessible building and facilities
- Lack of suitable rehabilitation programs
- Lack of funds to aid reintegration
- Inadequate wheelchairs, white canes, crutches and other equipment
- No specialised training to deal with offenders with special needs

According to Sereria (2014:220-221), Kenyan Prison Services has made some efforts at improving the conditions of prisoners in Kenya Prisons. These efforts include

- Establishment of a directorate handling the issue of special needs of prisoners at the headquarters
- The Department has hired a few professionals, i.e. psycho-educational assessment specialists (special needs teachers), with expertise in special education and social workers to help in the identification and classification of persons' with special needs and to assist in coordinating issues of special needs offenders with other agencies
- The Department has also employed medical practitioners to help in offering quality health care to these offenders.

- The Department has collaborated with non-state actors in assisting persons with disabilities in our penal institutions.
- The Department has come up with infrastructural modifications to address and make facilities
- Friendly for persons with special needs, that is the construction of ramps in some penal institutions.
- There is sentence remission for all offenders serving definite terms of imprisonment who are not lifers or offenders sentenced to death.

Though the KPS is making efforts to protect and preserve the rights of prisoners with disabilities much still needs to be done to meet international standards.

7.2.4 Prisoners living with disabilities in South Africa

There is a paucity of literature on prisoners living with disabilities in South Africa.

Section 35 (2) of the South African Constitution provides for the right to conditions of detention that are consistent with human dignity, Section 35 (2) (e) of the South African constitution provides that ‘everyone who is detained including every sentenced prisoner the right to conditions of detention that are consistent with human dignity; including at least exercise and the provision, at state expense, adequate accommodation, nutrition, reading material and medical treatment. The Department of Correctional Services says it has a policy regarding the handling of inmates with disabilities, which stipulates that inmates will be accommodated in line with their type of disability. According to Departmental spokesman Koos Gerber, individual needs are evaluated and attended to in the centers where the inmates are accommodated. From another point of view, the Corrections Service Acts does not make any special provision for disabled prisoners. According to Willie Clack, a lecturer at the Department of Corrections Management, University of South Africa who also had working experience with the Department of Corrections of South Africa, *‘the Act only made provision for sentenced and unsentenced prisoners, men and women, and children and adults to be held separately’*. To buttress his point, Clack further submitted that *‘there was one prisoner who had no legs and walked around on his hands. In some way or another they get along’* (News 24,2013). There is a need to verify the claims of the DCS in view of the submission of Clack. However, there seems to be a gap between policy and practice.

Regarding the number of offenders living with disabilities, Mr Joey Coetzee, a Deputy Commissioner of the DCS at the Gauteng Department of Correctional Services briefing of National Council of Provinces Committee Women, Children and People with Disabilities

informed the committee that there are 140 offenders living with disabilities in South Africa correctional facilities (Parliamentary Monitoring Group, 2014). The veracity of this figure cannot be established in view of the fact that some stakeholders such as National Institute for Crime Prevention and Reintegration of Offenders (Nicro) have stated that staff of the DCS is not trained to identify disabilities of offenders (The South Africa Health News, 2015). One is not even sure if proper screening and assessment are done at correctional facilities in South Africa to determine the nature of physical disabilities of offenders. If no proper screening is done on admission, then the figure may be higher than the 140 given.

Furthermore, this study found that the living conditions of prisoners living with physical disabilities in South Africa correctional services do not meet international standards as well as that it does not conform to the constitutional provision of ensuring that detention condition is consistent with human dignity: including at least exercise and the provision, at State expense, adequate accommodation. For example, a paraplegic offender at Kgosi Mampuru correctional facility claimed that he lived in an overcrowded cell with 37 other men. According to him *'I think the cell is meant for only about 20*. In a similar account by another paraplegic detainee, whose plight was shared by Wits Justice Project in The Guardian newspaper, *'he shared a cell designed for 37 with 87 other men. The international standard is for detainees with physical disabilities to be accommodated separately. This, however, is not the situation here'*. This type of treatment is cruel, degrading and amounts to torture. Not only were the prisoners with physical disabilities not separated from others due to their condition, they were also accommodated in overcrowded cells.

It is obvious that despite the fact that the DCS is claiming to have provision for prisoners with physical disabilities, the reality is showing something else. This could be seen in the submission of a detained notable paraplegic who further said *'no person with physical disabilities, not me, not O., nor anyone else, deserves to spend time in a South Africa prison'*. *The DCS was unable to supply me with the even rudimentary comfort of a wheelchair. Instead, the Wits Justice Project organised wheelchair to be donated. I was told my name would be placed on a 3-year waiting list'* (Daily Maverick, 2014).

The judiciary in South Africa further reiterated the non-availability of facilities to cater for the needs of physically disabled persons by granting bail to one of the detainees living with physical disabilities. According to the detainees *'Magistrate Rashed Mathews granted me bail in Bloemfontein this year because he specifically said DCS was unable to cater for people with disabilities like me in the prison'* (Daily Maverick, 2014).

One of the detainees with physical disabilities also complained about the lack of response to his requests. He was quoted as saying *“It’s no use asking for help or complaining around here. It doesn’t get you anywhere. I have never even bothered to complain to the ICCVs (Independent Correctional Centre visitors of the Judicial Inspectorate of Correctional Services). I did complain to them when I was in Zonderwater prison but nothing ever happened. Your complaints are never heard.”* (Daily Maverick, 2014). This type of treatment does not meet international standards and the rights of prisoners living with physical disabilities are not guaranteed in South Africa.

7.2.5 Prisoners living with disabilities in Ghana

Like other African countries, there is no much literature on prisoners living with disabilities. However, unlike in Nigeria, there are some legal provisions for prisoners living with disabilities in Ghana. This includes some provisions in the Disabled Persons Act and the Standard Operating Procedure Number PS/R/L-PS013-15 of the Ghana Prison Service.

– The Disabled Persons Act

An Act to provide for the rights of disabled persons in accordance with article 29 of the Constitution to establish a National Council on Disabled Persons to attend to the interests of disabled persons and to provide for related matters.

1(c) subject a disabled person to an abusive or degrading treatment.

3. Where a disabled person is a party to any judicial proceedings the adjudicating body shall in the application of its legal procedures, take into account the physical and mental condition of the disabled person.

Ghana Prison Service: Standard operating procedure NUMBER: PS/R/L – PS013-15 States the purpose and procedures for handling prisoners with physical disabilities

1.1. To identify all prisoners with physical disability and their special needs that will enable them to function within the prison by virtue of their disabilities

2.11. Special attention shall be given to hygiene, medical and dietary needs of all prisoners with a physical disability.

Regarding information on prisoners with physical disabilities in Ghana prisons, Dogbe et al (2016) states that data on the occurrence of prisoners with disabilities, the type of disabilities and availability of rehabilitation support or assistive devices are not well documented in Ghana. Similarly, there are no facilities in prisons in Ghana designed to meet the special needs of prisoners living with physical disabilities. A Deputy Prison Director who claimed that at the James Fort and Nsawam prison expressed this fact to Oyewo (2004:35), *physically disabled*

prisoners are expected to live in the prison-like other able inmates with no special facilities for them'. Though Oyewo's study was conducted in 2004, there seems to be little or no change in the lack of facilities for a physically disabled prisoner in prisons Ghana. This fact was buttressed by Dogbe et al. (2016) which observed that in spite of the fact that *'there has been a considerable increase in the number of prisoners in Ghana including those of Prisoners with Disabilities, there has not been a commensurate increase in the infrastructural development of the prisons'*. The excuse that is often given is lack of funding to alter existing structures and the general lack information on required facilities to aid PWDs. For me, this is not an excuse to subject prisoners living with physical disabilities to such cruel, inhumane and degrading treatment.

The lack of facilities in Ghana Prisons makes prisoners with physical disabilities to depend on other prisoners to assist them to meet most of their needs. Oyewo (2004:35) relayed the horrifying experience of a physically disabled detainee in one of the prisons in Ghana thus *'The inmate is a 'dwarf with a bad leg who has to sit on the floor at all times as he is too short to reach the chair. He finds it difficult to reach the door of the vehicle when he is being conveyed to the court. He also does not use the toilet seat because of his height and since there are no appropriate facilities for him he uses an improvised and undignified manner of relieving himself. He stated that when the taps do not flow, he finds it difficult to carry a bucket of water and when he has to rush for anything with the other inmates he losses out because of his bad leg'*. This is making him like other prisoner living with physical disabilities suffer further punishment apart from being imprisoned which itself is a lot of deprivation

The question that comes to my mind is 'if there is no data for this category of prisoners, how can there be any plan for their imprisonment, rehabilitation, and reintegration?'

In Ghana and Nigeria, the rights of able and disabled prisoners are not given serious consideration (Human Rights Watch 2004). The living condition and treatment of prisoners living with physical disabilities do not meet international standards and it amounts cruel, degrading and inhumane treatment.

7.2.6 Prisoners living with disabilities in Nigeria

In Nigeria, the first observation is that there is a dearth of literature on prisoners living with disabilities. Secondly, the few literatures available revealed that there is no provision for the rights of able or disabled prisoners in the constitution of Nigeria. The only guidelines applicable to the rights of the disabled prisoner are international instruments that Nigeria has acceded to (Oyewo, 2004: 39). The Nigeria Prison Acts provides for the manner in which mentally ill patients shall be handled but no specific reference was made as to the treatment of physically

disabled prisoners. Though the statement by Oyewo was in 2004 nothing has changed since then regarding the non - existence of any law regarding prisoners with disabilities. For instance, Bogart & Egboka (2017) stated that the current legal framework in Nigeria does not consider the particular challenges of Prisoners with Disabilities (PWDs) face in prison nor make provisions to address them, despite the need for such reforms.

In addition, there is no official data regarding the population of prisoners living with disabilities in Nigeria. Oyewo (2004) in a visit to two prisons namely Ikoyi Prison in Lagos and Agodi prison in Ibadan, Oyo State shows that there were less than 10 and 3 prisoners living with disabilities at Ikoyi and Agodi prisons respectively. This report by Oyewo is about 14 years ago and of just 2 prisons out of over 240 prisons in Nigeria. Hence the data cannot be relied on because of the time lag and non-representativeness of the number of prisons. It is therefore imperative that studies be conducted to obtain the accurate number of prisoners living with physical disabilities. The researcher is of the view that having an accurate data ought to be the first step to be taken to plan effectively for any policy or intervention for prisoners living with physical disabilities.

With regards to facilities to meet the special needs of prisoners living with disabilities in Nigeria prisons, Oyewo (2004) in her study, an appraisal of the right to dignity of prisoners and detainees with disabilities: A case study of Ghana and Nigeria found that there were no provision of facilities specifically designed for prisoners in the two prisons that formed sample for her study. The study also revealed that there was no policy for prisoners living with physical disability. Prisoners living with physical disabilities were locked up in the same cells with able-bodied prisoners. According to one of the prison officials in her study indicated that *'the physically disabled prisoners either cope on their own or depend on help from the other inmates'*, this makes the prisoners living with physical disabilities depend on others (Oyewo 2004:33).

Bogart & Egboka (2017), found in a study of four prisons in Lagos State, Nigeria which was carried out by interviewing prisoners with disabilities, prison officials, advocates, and academics, that for prisoners with physical disabilities, inaccessible prison facilities and a lack of mobility, hearing, or seeing assistance can often cause them to be dependent on the mercy of the other inmates for assistance in performing such basic functions as using the restroom, going to church, or washing themselves. This situation with prisoners living with physical disabilities is against international standards and conventions that Nigeria acceded to. In addition, it amounts to cruel, degrading and inhumane treatment.

Furthermore, Oyewo (2004:40) stated that the attitude of prison officials towards the condition of physically disabled prisoners is not sympathetic. From the responses of interview of prison officials, it was revealed that there should not be any special treatment for prisoners living with physical disabilities and that since prison is not a place of enjoyment and in view of inadequate funding that, setting aside some facilities for the comfort of the disabled prisoners is not necessary. Bogart& Egboka (2017) also reported that prison officials do not assist these PWDs or provide them with aids, such as crutches or a cane. This is no excuse for the rights of prisoners with physical disabilities to be infringed upon. The attitude of prison officials also negates the philosophy of rehabilitation. If Nigeria prison officials who are expected to be agents of rehabilitation do not care about the wellbeing of prisoners with physical disabilities, then the rehabilitation process may not achieve its purpose.

To reiterate the lack of facilities for prisoners with physical disabilities in Nigeria prisons, the Chief Judge of Lagos State released 67 inmates with physical disabilities in some prisons in Lagos State on health grounds. In addition, to underscore the non-availability of rehabilitation services for convicted persons with physical disabilities, the Chief Judge was quoted thus *'those that have been convicted (prisoners with physical disabilities) of their crimes will be handed over to the Ministry of Youths and Social Welfare for their empowerment and rehabilitation'*. (Vanguard news, 2017). In as much the Chief Judge's gesture is commendable, much still need be done in the area of reforms and policy formulation that will make specific provisions to meet the special needs of prisoners with physical disabilities.

The treatment meted to prisoners living with physical disabilities does not conform to the Nelson Mandela rules, Luanda declaration and The UN charter on People living with Disabilities.

In Rwanda, domestic civil society organizations reported impediments for persons with disabilities, including lack of sign language interpreters at police stations and detention centers (U.S human rights reports, 2016). In Morocco, prison authorities did not accommodate the needs of prisoners with disabilities (U.S Human rights reports, 2016)

Most of the prison condition and infrastructure in most prisons in Africa is not in agreement with the United Nations Convention on the Rights of Persons with Disabilities. For instance, Article 4: 3 states that 'parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising legal capacity. Dogbe et.al (2016) reports that there is a general neglect in the protection of the rights of prisoners with disabilities in Africa. KPS is noted to have made considerable improvement in the area of providing facilities for prisoners living with disabilities (Sereria, 2014: 220-221). It is the expectation of

this researcher that the efforts of improving the conditions of prisoners with disabilities will be sustained, enhanced and extended to all prisons in Kenya. It is also hoped that other African countries would emulate the positive steps of Kenya in making prisons environment-friendly for prisoners.

7.3 Foreign national prisoners

The term foreign national prisoners refer to prisoners who do not carry the passport of the country where they are imprisoned. This term, therefore, covers prisoners who have lived for extended periods in the country of imprisonment, but who have not been naturalised, as well as those who have recently arrived (UNODC, 2009:79). Globally, the population of foreign national prisoners is on the increase, for example, the number of foreign inmates in Japan doubled between 1997 and 2005 and a 127 percent rise has been noted in Korea (25th APPCA Conference Report, Seoul, Republic of Korea, September 2005). In the Middle East as well, foreign nationals represent 50.9 % in Saudi Arabia, 55.6 % in Qatar, 36.1% in Lebanon and 24.9% in Israel (www.nationmaster.com/graph/crime_pri_for_pri-crime-prisoners-foreigners). UNODC (2009:4) reports that foreign prisoners, currently make up over 20% of the prison population in European Union countries and a few countries of South Asia and Middle East. In Africa, the number of foreign national prisons are relatively low, though with a few exceptions such as Gambia with 66.7% (International Centre for Prison Studies, World Prison Brief, 2015). A significant increase in the number of foreign national prisoners has been noted in South Africa (Dissel & Kollapen., p.62 cited in Penal Reform International, 2015:18). The increased movement of people from one country to another, including due to migration and globalisation, has led to a growing number of non-nationals being held in prison. It was estimated in October 2014 that globally they number almost half a million prisoners (Penal Reform International, Global Prison Trends, 2015:18).

7.3.1 Foreign national prisoners in African countries

There is very limited literature on foreign national prisoners in African countries in spite of the increased treatment of foreign national prisoners in African countries. Adissa (2016:187) that conducted a study to investigate the treatment of foreign national prisoners in the Ethiopian Federal prison confirmed this. He lamented that '*it was difficult for the researcher to find literature related to the topic*'. This assertion corroborates this researcher's challenge in getting literature and data on foreign national prisoners in prisons in Africa. In view of the increase in the population of foreign national prisoners, there is a need for more studies to identify the specific needs of this category of prisoners. Without information, it will be difficult if not

impossible to design policies that would take care of the special needs of foreign nationals in prisons in Africa.

Regarding data on foreign national prisoners in African countries, there is no comprehensive and explicit data. However, this study was able to obtain some data regarding the population of foreign nationals in some prisons in Africa. For example, Zimbabwe is said to be holding 345 foreign nationals in her prisons (The Herald, 2014). This figure was given by Zimbabwe Prisons and Corrections Services (ZPCS) Superintendent Elizabeth Barda and that 233 were awaiting deportation at the end of their services, 90 were serving their sentences, while 20 were still on trial. This data given by the ZPCS official was as at September 3 2014. The researcher was unable to get the current statistics on foreign national prisoners in Zimbabwe.

The prison population of foreign nationals in South Africa leaves more questions than answers. This is because there are two conflicting figures given by government officials. For example, in a response to questions by Freedom First Plus in South Africa Parliament, Justice Minister Michael Masutha answered that there were about 11 842 foreign nationals in South Africa's prisons (The South African, July 7, 2017). While at another forum, the Minister of State Security David Mahloboduring a media briefing gave the figure of foreign nationals in South Africa prisons as 6 440 (htxt, July 10, 2017). One of the reasons why the disparity in the population of foreign nationals is of a concern is that the figures were given within the same week. It is important for the South African authority to give an accurate figure of foreign nationals in South Africa Correctional centers as knowing the accurate population could assist in formulating policies in protecting the rights of these foreign nationals in South African prisons.

In Ghana, the Chief Public Relations Officer of the Ghana Prison Service, ASP Courage Atsen disclosed to a daily newspaper The Daily Graphic that there were 707 foreign national serving terms in Ghana as at May 23, 2011 (The Daily Graphic May 23, 2011). It is instructive to mention that this data given is not current as this was given almost seven years ago.

In Nigeria, a Public Relations Officer Ope Fatinikun of the Nigeria Prison Service at a media chat organised by non-governmental organization, 1-Nigeria Initiative gave the number of foreign nationals in Nigeria prisons as 151 as at November 6, 2014. Again, this data is not current as the information was given almost 4 years ago.

This study was able to obtain data showing the percentage of foreign national prisoners in African countries in relation to the total prison population and the ranking of the percentage. Like in most available data on prisons in Africa countries the source of the data is foreign

specifically from the International Centre for Prison Studies, World Prison Brief.2016. However, the data only reflected the per centage and not the population.

The data is presented hereunder

Table 3: showing foreign prisoners (percentage of prison population)

Ranking	Title	Foreign Prisoners (%)
1	Gambia	66.7
2	Botswana	31.6
3	Cote d'Ivoire	30
4	Libya	12.8
5	Senegal	10.7
6	Comoros	7.7
7	Seychelles	7.5
8	Ghana	6.8
9	Mauritius	6.4
10	South Africa	6.3
11	Swaziland	6
12	Namibia	5.5
13	Togo	5.2
14	Burkina Faso	4.1
15	Tanzania	3.7
16	Algeria	3.2
17	Cameroon	3.1
18	Republic of Guinea	2.7
19	Zambia	2.1
20	Liberia	2
20	Zimbabwe	2
22	Morocco	1.4
23	Sierra Leone	1.3
23	Chad	1.3
25	Burundi	1.2
26	Sudan	1
26	Egypt	1

28	Lesotho	0.9
28	Mozambique	0.9
30	Sao Tome e Principe	0.8
31	Kenya	0.6
32	Uganda	0.5
33	Rwanda	0.3
33	Nigeria	0.3
35	Malawi	0.2
36	Madagascar	0.1

Source: Interantional Centre for Prison Studies, World Prison Brief,2016

The data from the table above for 36 African countries show the percentage of foreign nationals' prisoners' in relation to the total prison population in different African countries range from to 66.7% to 0.1%. Gambia ranked 1st with 66.7%, while Madagascar has 0.1%. The table further shows that the percentage of foreign national prisoners follows: Botswana (31.6%);Coted'Ivoire(30.0%); Libya(12.8%); Senegal (10.7%);Comoros(7.7%);Seychelles(7.7%);Ghana(6.8%);Mauritius(6.4%);South Africa(6.3%).Others include Swaziland(6.0%);Namibia(5.5%);Togo(5.2%)Burkina Faso(4.1%);Tanzania(3.7%)Algeria(3.2%);Cameroon(3.1%)Republic of Guinea(2.7%);Zambia(2.1%);Liberia(2.0).In addition, Liberia(2.00%);Zimbabwe(2.00%);Morocco(1.4%);Sierra Leone(1.3%);Chad(1.3%);Burundi(1.2%);Sudan(1.0%);Egypt(1.0%);Lesotho).9%);Mozambi que(0.7%) Sao Tome and Precipe (0.8%);Kenya (0.6%);Uganda(0.5%);Rwanda(0.3%);Nigeria(0.3%) and Malawi(0.2%).

7.3.2 Treatment of foreign nationals

Nelson Mandela Rule 62 states that:

1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the state to which they belong
2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representatives of the State which takes charge of their interests or any national or international authority whose task is to protect such persons.

Article 34b of the Luanda Declaration

Non – citizens

Non- citizens shall be informed of their right to contact consular officials and relevant international organisations, and be provided with the means to contact relevant authority immediately.

Detaining authorities must provide unhindered access to consular officials and relevant international organisations, and provide the detainee with facilities to meet with such persons. The few literature available regarding treatment of foreign nationals in prisons in African countries shows that such treatment of foreign nationals in prisons in Africa does not meet international standards. Abdissa (2016:190) concluded that the treatment of foreign national prisoners in Federal Prison in Ethiopia is far below the minimum human rights standard. He went further to say that the treatment of foreign national prisoners in Federal Mens Security and women's prison is not standardised in some aspects. In specific terms, the study reported that prison authorities in Ethiopia federal prison did not make translation service and information packs for foreign national prisoners. It was stated that often prison authorities used other people as a go-between which may lead to misleading information. This is in contrary to Nelson Mandela rule 61((2) and the Luanda declaration which stipulates that the services of an interpreter must be used with regards to foreign national prisoners. Concerning accommodation, Abdissa (2016:189) found out that though foreign national prisoners are living in separate zones within the prisons, there is no standard sleeping accommodation as cells are overcrowded. For instance, it was observed that each room accommodates more than 150 prisoners. This is also in contrary to Nelson Mandela rule 12(1) and Luanda Declaration that specify that prisoners are expected to be accommodated in individual cells or rooms.

In addition, the study revealed that foreign national prisoners sleep on the floor and at night they are overcrowded. Regarding mattresses and blankets, participants of this study mentioned that the prison administration did not supply any to the foreign national prisoners. They are expected to provide clothing and blankets for themselves. One wonders where foreign nationals' prisoners are expected to get money to buy uniforms, clothing, blankets, and mattresses. This is also contrary to Nelson Mandela rule.

In the area of healthcare, it was mentioned that prison authorities provided appropriate and full health services for foreign national prisoners free of charge at Federal prison administration hospital and clinics. Largely provision of appropriate and full health services to foreign national prisoners meets international standards.

Another finding of Abdissa's study is in the provision of food and water; the study stated that there is appropriate water supply throughout the day for sanitation facilities. The question is what of in the night? The study further reported that Federal prison authorities provided about eight birrs and twenty cents per prisoner for each foreign national prisoner per day only for food. The adequacy of this daily provision for food cannot be verified. With the help of ICRC, the prison authority constructed a common kitchen at Kailys men high-security prison and women prisons. With a common kitchen, will there not be cases of abuse amongst male and female prisoners?

The study also reported that though, there is provision for the education of prisoners; however, male foreign nationals are not permitted to have access the educational services. The study was not able to adduce any reason for this discrimination. Nevertheless, the study found that 5.98% of women foreign national prisoners participated in the technical and vocational program during the 2013/2014 and 2014/ 2015 fiscal year (Adbissa, 2016:189). In Mozambique, Lorizzo (2012:34) in a study conducted in Maputo prison captured some of the special needs of foreign national prisoners. The situation of the three foreign prisoners interviewed was an area of concern. A lack of documents of identification and language barriers make access to justice very difficult. Embassies and/or consulates do not recognise people who cannot prove their citizenship. The absence of diplomatic representatives in Mozambique and the lack of transfer agreements with other countries make the situation even worse'.

One foreign respondent in the study was quoted to have lamented thus:

'I became invisible in this world. No one at home knows where I am and here there is no embassy to represent me. I am allergic to the food they give me but I need to eat to stay alive. No lawyer came to see me and I do not know what to do'. Without a doubt, this respondent is feeling hopeless and feels dehumanised. If adequate care is not taken the prisoner could develop mental health challenge.

The plight of 4 South African women who have been in a Kenya prison for a period of between 2 months to 5 years without the knowledge of their family was described by South Africa Women's Association thus: *'The South African High Commission can't really do much for these women. They can notify family members should they wish, but they don't help them financially and they don't provide them with any legal help'* (Jamieson, 2015)

The U.S report on human rights (2016) on Sudan revealed that diplomatic missions rarely were notified when nationals from their countries were arrested. When embassies were notified of arrests, representatives were allowed to speak to detainees' families and lawyers but never allowed to visit inmates.

Another major finding of this study is despite the high proportion of foreigners in prisons worldwide and their special needs, in the vast majority of countries including African countries, there are no policies or strategies in place to address the needs of foreign national prisoners (UNDOC, 2009:80).

From the above report lack of documentation, language barrier, the absence of diplomatic representative in the country and lack of diplomatic agreement regarding the transfer of detainees, no legal representation as well as feeding. Other special needs of the foreign national prisoner could include the need to be protected from discrimination of any form of abuse, protection from harmful effects of imprisonment in a foreign country, medical care, hygiene and rehabilitation after serving their term. Taking into cognisance the increase in the number of foreign national prisoners in Africa that is occasioned by migration, there is a need to have data on foreign national prisoners; need to conduct more studies on these categories of prisoners as this could assist in formulating policies that would help in the treatment of this category of offenders.

7.4.1 Prisoners living with HIV/AIDS

The prevalence of HIV and Tuberculosis amongst prison population is not unique to Africa. It is a worldwide phenomenon. However, the issue of HIV and Tuberculosis among the prison population in Africa calls for attention because not much attention has been given to it (UNDOC, 2007) apart from the fact that it is a public health issue as well as a human rights issue.

This section presents some of the findings from a review of available literature.

The study revealed that there not much studies have been done on HIV and Tuberculosis in prisons in African countries. For example, Telisinghe, Charalambous, Topp, Hecce, Hoffman, Barron, Schouuten, Jahn, Zachariah, Hame Beyrere & Amon (2016) in a study that reviewed the literature on HIV and tuberculosis in Sub Sahara Africa identified data only from 24 out of 49 countries. The researcher also found out that there were limited research on HIV and tuberculosis in more than half of the countries in the last five years

There is no accurate data on the prevalence of HIV amongst the prison population. This was reported in most available studies on the prevalence of HIV IN African countries. According to UNODC (2007), *'existing data are not recent or accurate enough to provide a picture of the current HIV situation African prisons'*. In 2012 a report of Special Rapporteur on prison and conditions of detention in Africa presented by the Honorable Commissioner MED SK Kaggwa at the 52nd Ordinary Session of the African Commission in 2012, *'statistics on HIV prevalence*

are not available, it can reach 40%'. This submission is speculative and not reliable. The situation of not having accurate data on HIV among the prison population was reiterated by Telisinghe et al (2016) who in their study revealed the 'non-availability of data and where data is available they were frequently of poor quality and rarely nationally representative'. One reason given why there are no available accurate data on HIV prevalence is due to the biases caused by conducting research within hostile prison environment and the inconsistent manner in which data has often been gathered (Desmond Tutu Health Foundation NUMBER 201).

In fact, most of the literature available on HIV and Tuberculosis in prisons in Africa are based on findings from Sub Sahara Africa. In addition, some of the findings of the study conducted on HIV in prisons cannot be generalised or said to be the national data because some of the studies were conducted in a few prisons.

In addition, most studies indicated a consistently higher prevalence of HIV infection and tuberculosis among the prison population. UNDOC (2007) reported that HIV prevalence in sub-Saharan Africa is estimated at between 2 to 50 of the non-prison population while average tuberculosis incidence in prisons worldwide has been estimated at more than 20 times higher than in general population. In another study by Dola, Kite, Black, Accejjal & Stimson (2007), a higher rate of HIV has been documented in prison population. Likewise, Scheibe, Brown, Zoe & Bekker (2011) commented that there are disproportionately higher levels of HIV among prisoners compared to the general population. Telisinghe et al (2016) commented that detainees nearly always had a higher prevalence of both diseases than did the non-incarcerated population in the same country. Prevalence was also higher in women in prison than in those in the surrounding or non-incarcerated population. One cross-sectional study in Zambia showed a higher prevalence among already-incarcerated detainees than among those entering prison.

From the available data Dolan et al (2007) submit that the HIV prevalence among prison population such as South Africa to be 41%; Cote D'Ivoire-27.5%, Zambia-27%. A 2009 report from Zimbabwe suggested that more than half of the prison population in that country may be HIV infected (Alexander, 2009). Reported prevalence of HIV infection ranged from 2.3% to 34.9% (2.3%–10.8% in West Africa; 4.2%–23.0% in East Africa; and 7.2%–34.9% in southern Africa); tuberculosis prevalence ranged from 0.4% to 16.3% (1.2%–16.3% in West Africa; 0.5%–12.1% in East Africa; and 3.6%–7.6% in Southern Africa) (Telisinghe et al 2016). In April, SERNAP in Mozambique (Country Reports on Human Rights Practices for 2016) told local media that its statistics showed an estimated 20 percent of the approximately 15,000 prisoners were HIV-positive, compared with an estimated 11 percent of the country's total population.

On the causes of prevalence and transmission of HIV among prison population in Africa countries, the existing body of the literature identified a number of factors.

According to UNODC (2007:16) these factors include or range from the weakness of the criminal justice and judicial systems, social stigma, institutional and societal neglect, lack of resources for maintenance of existing penal institutions, poor food and nutrition, lack of health care, overcrowding, mixing of un-sentenced and convicted persons, high-risk sexual and other behavior (such as injecting drug use and blood mixing) and lack of conjugal visits.

Jurgens, Nowak & Day (2011) identified overcrowding resulting in an exacerbating food shortages, poor sanitation, and inadequate health care conditions to the spread and the development of HIV among the prison population. Regarding TB minimal ventilation, poor isolation practices and a significant immune-compromised population equally facilitate the transmission and development of TB diseases. The issue of overcrowding is a serious one as most of the African prisons have over 100% occupancy level. One of the implications of overcrowding in prisons according to UNODC (2007:19) is the mixing of prisoners across categories of those incarcerated (pre-trial detainees, convicts, juveniles, men, and women).

Furthermore, Reid, Topp, Turnbull, Hatunda, Harris, Maggard, Roberts, Kranner, Morse, Kaputa, Chisels & Henstroza (2012:226) identified the absence of a comprehensive public health approach to HIV and TB and systemic failure to address growing burden of HIV and TB in prison setting. Health care in most African prisons is usually substandard or nearly non-existent. Other factors identified by Mumba & Malembeka (2013) are the lack of sufficient numbers of health workers and training to provide HIV and tuberculosis treatment and other services as a severe constraint on delivering care in sub-Saharan African prisons.

Tordy & Amon (2012) postulated that criminal justice failure, limited resources for health, inadequate funding as a significant challenge to the ability of health workers to deliver health care in prisons are reasons for spread of HIV in prisons. Hence the prevalence of HIV and TB among the prison population.

The appalling physical conditions of African prisons, along with inadequate food and nutrition and almost non-existent health services, seriously exacerbate the prevalence of HIV inside prisons. Prisoners often exchange basic goods (hygiene products such as soap or personal items such as blankets or shoes) for sex as those items may be unavailable for the majority while in prison. In the same way, poor food and nutrition, including low quality and scarcity of food for those incarcerated, drives prisoners towards the exchange of sex for food (UNODC, 2007).

Lack of political will to deal with the issue of sexual violence amongst the prison population is another reason why the transmission of HIV in prison is high. For instance, Scheibe et al.

(2012) highlighted that historically, little attention has been paid by the Department of Corrections Services (DCS) in South Africa on preventing sexual violence and that the department lacks a comprehensive framework for dealing with the problem. The Human Rights Watch report 2013 in Tanzania captures the lack of commitment on the part of the security officials in handling the issue of sexual violence among detainees through a comment of a detainee that was raped in detention. He was quoted thus *'We called the police and screamed for help, saying, 'These guys are forcing us to have sex with them.' But the police said, 'That is good, that's what you want.' So the police were encouraging the guys in there. There were about 50 other detainees, and five of them were raping us. Three of them raped me personally'*. The revolving – door effect – as a result of detainees, prison personnel, and visitors cycling in and out of prisons – can result in the concentration of HIV and tuberculosis in prisons, and could amplify these diseases in the wider communities into which detainees in the wider communities into which detainees are released and in which prison personnel live (Reid et.al;2012. Henostroza et.al 2013).

Another finding of the study is that international guidelines recommend a package of HIV & TB intervention for prisoners in low and medium countries. Despite the endorsements of these international and regional governing bodies, these interventions are seldom available in Sub Sahara Africa prisons. The non-availability of these interventions and recommendations have been attributed to some factors which include financial constraints, inadequate infrastructure, absent health information, inadequate infection control procedures amongst others.

Regarding policies guiding the prevention, care, and treatment of HIV &TB among prison population in Africa, literature revealed that only a few African countries have comprehensive policies in place guiding the implementation of HIV & TB prevention, care and treatment activities in the prison. It was further revealed that South Africa has a fully developed prison guideline for TB, HIV and Sexually Transmitted Infections (STI). While South Africa has fully developed a comprehensive package of interventions prisons in Benin Republic, Nigeria and Zambia are still dependent on guidelines developed for the general community with little or no reference to the peculiarities of the prison population (Telisinghe et.al 2016).

Among detainees in Africa, it was also discovered that there is a continuous breakdown of continuity of care for HIV & TB patients. This often occurs as a result of interfacility transfer and releases (Davies& Karstaedt, 2012). The breakdown of continuity in HIV & TB care affects the patients adversely and they pose a great challenge to the public health of the general population.

In some African countries previous studies such as Mashako, Sebahire & Murhabazi (2012), Ulo, Chepkonga, Kibosia, Karari, Lillo, Ochieng, Ogutogullari., Roth, Muhenje, & Odhiambo (2011) Makombe, Jahn & Tweya (2007) shows that voluntary HIV and counselling and testing is available in some countries such as Cameroon, Cote de Ivoire, Democratic Republic of Congo, Kenya, Malawi, South Africa, Uganda and Zambia. Kyomya, Todyrs & Amon (2012) reported that prison inmates are provided with condoms in Burundi, Lesotho, and South Africa. In Namibia, there is limited HIV transmission in prisons. According to the U.S human rights report of 2016, the government refused to distribute condoms to prisoners. However Davies & Karstaedt (2012), Reid et al (2012) and Telisinghe et al (2015) reports that there is a limited availability of Anti-Retroviral Treatment in African prisons.

Regarding funding of HIV & TB prevention and treatment, Telisinghe et al (2016) submits that the total national funding for prevention and treatment services for HIV & TB in prisons is complicated by multiple funding sources and frequent lack of transparency in the report of funding. According to the authors, funding can come from domestic government, Non-Governmental Organisations, and international donors and that such funding is often channeled through health, justice or interior ministries or through NGO interventions.

From the findings from the review of existing literature, it is apparent that the issue of HIV and Tuberculosis in African prisons is not been given the necessary attention; there is no accurate data; there is a need to conduct more studies on the situation in most prisons so as to gather data that could be used for designing effective policies targeted at resolving the prevalence of the infection among the prison community. The treatment of prisoners regarding HIV and tuberculosis does not meet international standards hence it is an abuse of the fundamental human rights of prisoners.

7.5 Women in prison in African countries

In this section, the study based on review of related literature, gave an overview of women in prison in African countries, provide data regarding number of women in prisons and evaluated the treatment and living conditions with regards to the Nelson Mandela Rule, Luanda Declaration, and Beijing Declaration.

7.5.1 Overview of women in prison

Women and girls constitute a minority in criminal justice systems, representing only an estimated two to nine percent of national prison populations (UNODC, 2014). As a result, they can find themselves in criminal justice systems that are originally As a result, they can find

themselves in criminal justice systems that are designed for the male majority population and do not address their specific circumstances and corresponding needs. This was recognised in 2010 when the international community adopted the United Nations Rules for the Treatment of Women Prisoners and Non Custodial Measures for Women Offenders ('Bangkok Rules') which outline the measures that is needed to ensure the gender-sensitive treatment of women both in prison and under non- custodial measures or sanctions (Penal Reform International, 2016).

The prison population of women all over the world is on the increase. According to the third edition of the World Female Imprisonment List, researched and compiled by Roy Walmsley and published by the Institute for Criminal Policy Research at Birkbeck, University of London, there are 700,000 women and girls locked up in various prisons all over the world. The World Imprisonment list stated that the prison population has grown faster than male prison population since around 2 000 with the number of women and girls in prison increasing by 50% in the last 50 years (Walmsely, 2015).

The total female population in African countries is put at 30,675 as at 2015. There have not been any official figures since 2015. The increase in the global total female population also affects Africa. It is noted that the number of women imprisoned in the Africa continent has grown by 22% in the last 15 years (Wamsley, 2015).

There are other data obtained by this study in the course of a review of the literature on female prison population in Africa. These include that the proportion of women and girls within the total prison population is lowest in Africa countries, where the median level is 2.8% compared to the 6.0% of Asian countries which is the highest in the world. In addition, the female prison population in Africa is the lowest in the proportion of the national population as the female prisoners in Africa constitute 2.5% per 100 000 compared to the Americas that has the largest of 12.51% per 100 000 of the national population

Table 4 showing the female prison total population, date, percentage of total prison population, female prison population rate and trend information

Countries	Female Prison population Total	Date	Percentage of total prison population	Female prison population rate	Trend information			
					Year	Total	% Age	Rate
Algeria	1063	2014	0.017	2.7	2000	626	0.018	2
					2006	607	0.011	1.8
					2010	820	0.015	2.3
					2014	1063	0.017	2,7
Angola	522	2011	0.027	2.6	1999	c. 97	c. 2%	c. 0.7
					2003	196	0.033	1.3
					2011	522	0.027	2.6
Benin Republic	360	2012	0.05	3.8	2000	c. 140	c. 3.6%	2.1
					2006	220	0.038	2.8
					2008	210	0.035	2.5
					2012	360	0.05	3.8
Botswana	75	2014	0.018	3.7	2001	289	0.046	16.2
					2004	306	0.05	16.4
					2009	215	0.041	11
					2014	75	0.018	3.7
Burkina Faso	113	2015	0.015	0.6	2001	25	0.01	0.2
					2007	74	0.018	0.5
					2010	100	0.02	0.6
					2015	113	0.015	0.6
Burundi	345	2015	0.04	3.1	2002	216	0.025	3.2
					2006	231	0.032	3.1
					2010	349	0.038	4.2
					2015	345	0.04	3.1
Carbos Verde	57	7/13	0.04	11.4	1999	38	0.05	8.7
					2010	73	0.06	14.9
Cameroon	554	2014	0.021	2.4	2003	503	0.025	3
					2009	488	0.021	2.4
					2014	554	0.021	2.4

Central Africa republic	69	40848	0.082	NOT AVAILABLE	N/A	N/A	N/A	N/A
Chad	35	40664	0.028	-	2002	21	0.025	-
Comoros	7	41913	0.03	0.9	2010	2	0.015	0.3
Democratic Republic of the Congo	c.600	2010	c.2.7%	C1.0	2004	83	0.032	n/a
					2008	130	0.03	n/a
Republic of the Congo	99	2009	0.041	2.5	2005	82	0.053	2.3
Cote D'Ivoire	271	2015		2.2				
Djibouti	c.35	2014	c.5.8%	C 4.0	2009	c.24	c 4.8	c 2.9
Egypt	2386	2006	0.037	3.2	2002	2213	0.043	3.2
					2005	2453	0.036	3.4
Equatorial Guinea								
Eretria								
Ethiopia	3630	2011/12	0.033	4.2	2001/0 2	2034	0.033	3
					2005/0 6	1994	0.028	2.6
					2009/1 0	3895	0.035	4.7
					2011/1 2	3630	0.033	4.2
Gabon								
Gambia	28	2014	0.043	n/a	n/a	n/a	n/a	n/a
Ghana	162	2017	0.012	0.6	2000	143	0.015	0.7
					2005	257	0.021	1.2
					2010	187	0.014	0.8
					2015	199	0.014	0.7
					2017	162	0.012	0.6
Guinea	116	2014	0.037	1	2002	61	0.02	0.7
					2007	112	0.044	1.1
					2014	116	0.037	1
Guinea- Bissau	4	2013	4.3	n/a	n/a	n/a	n/a	n/a
Kenya	1805	2013	0.034	4.1	2001	1486	0.042	4.6
					2006	2000	0.042	5.5
					2009	2081	0.045	5.3
					2013	1805	0.034	4.1
Lesotho	74	2014	0.036	3.3	2000	139	0.045	7
					2005	78	0.027	3.8
					2010	61	0.024	2.3

					2014	74	0.036	3.3
Liberia	49	2015	0.023	1.1	2001	not known	c. 5%	-
					2007	50	0.049	1.4
					2010	31	0.02	0.8
					2015	49	0.023	1.1
Libya	63	2013	0.012	1	2004	387	0.033	7
					2007	347	0.027	6
					2010	345	0.026	5.7
					2013	63	0.012	1
Madagascar	852	2014	0.043	3.6	2003	650	0.034	3.9
					2006	573	0.033	3.1
					2010	736	0.039	3.6
					2014	852	0.043	3.6
Malawi	129	2014	0.011	0.8	2001	91	0.013	0.8
					2005	117	0.012	0.9
					2010	156	0.013	1
					2014	129	0.011	0.8
Mali	145	2014	0.028	0.9	2002	80	2	0.7
Mauritania	21	2014	0.012	0.5	1999	34	0.0256	1.3
					2010	62	0.036	1.7
Mauritius	112	2017	0.054	8.8	2000	78	0.047	6.5
					2005	137	0.056	10.9
					2010	153	0.062	11.8
					2015	116	0.056	8.9
					2017	112	0.054	8.8
Morocco	1715	2015	0.023	5	2002	1776	0.033	6
					2006	1227	0.024	4
					2010	1721	0.027	5.4
					2015	1715	0.023	5
Mozambique	618	2013	0.039	2.5	1999	551	0.063	3.1
					2009	358	0.022	1.6
					2013	618	0.039	2.5
Namibia	85	2015	0.024	3.4	2000	104	0.021	5.4
					2007	110	0.027	5.1
					2015	85	0.024	3.4
Niger	c. 205	2012	c. 3%	c. 1.2	2006	183	0.032	1.3
					2008	244	0.037	1.6
					2010	155	0.029	1
					2012	c.205	c.3%	1.2

Nigeria	1043	2016	0.017	0.6	2000	709	0.019	0.6
					2005	722	0.019	0.5
					2011	908	0.019	0.6
					2016	1043	0.017	0.6
Rwanda	3526	2013	0.065	29.6	2002	2925	0.026	33.6
					2009	c. 4,200	c. 6.6%	40.3
					2013	3526	0.065	0.29 6
Sao Tome	66 6	2015	0.034	2.9	2002	3	0.023	2.1
					2009	7	0.029	4
					2015	6	0.034	2.9
Senegal	275	2016	0.029	1.7	2000	183	0.037	1.9
					2005	234	0.036	2.2
					2008	256	0.037	2.2
					2016	275	0.029	1.7
Seychelles	45	2014	0.061	48.9	2002	4	0.027	4.8
					2006	11	0.077	13
					2010	28	0.065	31.5
					2014	45	6.1	48.9
Sierra Leone	116	2015	0.033	1.8	2007	66	0.033	1.2
					2010	79	0.035	1.4
					2015	116	0.033	1.8
Somalia								
South Africa	4193	2016	0.026	7.5	2000	3966	0.025	9.2
					2005	4072	0.022	8.7
					2010	3694	0.022	7.4
					2016	4193	0.026	7.5
South Sudan	c.400	31/12/2013	c.5.3%	c.3.5	n/a	n/a	n/a	n/a
Sudan								
Swaziland	Cc 105	2014	0.029	8.4	2002	133	0.039	12.3
					2005	104	0.039	9.4
					2009	68	0.026	5.8
					2014	c.105	0.029	8.4
Tanzania	1285	2011	0.034	2.8	2005	1515	0.033	3.9
					2008	1361	0.033	3.2
					2011	1285	0.034	2.8
Togo	115	2014	0.026	2.6	1998	46	0.023	1
					2011	92	0.021	1.4

Tunisia	64	2014	0.027	5.8	2011	400	0.019	3.7
Uganda	1848	2014	0.044	4.8	2005	901	0.034	3.2
					2008	1060	0.036	3.4
					2010	1175	0.038	3.5
					2014	1848	0.044	0.04 8
Zambia	168	2013	0.01	1.2	2005	237	0.017	2.1
					2013	168	0.01	1.2
Zimbabwe	324	2014	1.90%	2.5	2001	671	3.50%	5.3
					2005	602	3.30%	4.8
					2011	340	c.2.4%	2.7
					2014	324	1.90%	2.5

From the table above, it was revealed that South Africa has the highest number of female prisoners in Africa 4,193 (2.6%) of the total prison population. Followed by Ethiopia, 3,630 (3.3%); Rwanda 3,526 (6.5%); Egypt has a female prison population of 2,386 (3.7%); Uganda 1,848 (4.4%); Kenya 1,805 (3.4%); Morocco 1,715 (2.3%); Tanzania 1,285 (3.4%). Other are Algeria 1,063 (1.67%); Nigeria 1,043 (1.7%); Madagascar 852 (4.5%); Mozambique, 618 (3.9%); Mozambique 618 (3.9%); Democratic Republic of Congo 600 (3.0%); Cameroon 554 (2.1%); Angola 552 (2.7%); South Sudan 400 (10.9%); Benin Republic 360 (5.0%); Burundi 345 (4.5%) Zimbabwe 324 (1.8%)*; Senegal, 275 (2.9%); Cote D'Ivoire 271 (2.1%); Niger 205 (3.0%). The table further revealed that Zambia has 168 female prisoners (1.0%); Ghana 162 (1.2%); Mali 145 (2.8%); Malawi 129 (1.1%); Sierra Leone 116 (3.3%); Guinea 116 (3.7%); Mauritius 115 (4.9%); Togo 115 (2.7%); Burkina

Faso 113 (1.5%). Swaziland 105 (2.9%); Republic of the Congo 99 (3.0%); Central Africa Republic 89 (8.2%); Botswana 75 (1.8%); Lesotho 74 (3.6%); Sao Tome 66 (5.1%); Libya 63 (1.2%); Cabo Verde 57 (4.0%); Liberia 49 (1.3%); Chad 35 (2.8%); Gambia 35 (2.8%) Gambia 28 (2.5%) Comoros, 7 (3.0%) and Guinea Bissau 4 (2.6%)

Table 5 showing the Highest to Lowest - Female prisoners (percentage of prison population)

Ranking	Title	Female Prisoners (%)
1	South Sudan	10.9
2	Central African Republic	8.2
3	Rwanda	6.5
4	Seychelles	6.1
5	Sao Tome e Principe	5.1
6	Djibouti	5
6	Benin	5
6	Equatorial Guinea	5
9	Mauritius	4.9
10	Madagascar	4.5
10	Burundi	4.5
12	Uganda	4.4
13	Cape Verde (Cabo Verde)	4
14	Mozambique	3.9
15	Republic of Guinea	3.7
15	Congo (Brazzaville)	3.7
15	Egypt	3.7
18	Lesotho	3.6
19	Gabon	3.5
20	Tanzania	3.4
20	Kenya	3.4
22	Ethiopia	3.3
22	Sierra Leone	3.3
24	Niger	3
24	Democratic Republic of Congo (formerly Zaire)	3
24	Comoros	3

27	Namibia	2.9
27	Swaziland	2.9
27	Senegal	2.9
30	Mali	2.8
30	Chad	2.8
32	Tunisia	2.7
32	Togo	2.7
32	Reunion (France)	2.7
32	Angola	2.7
36	South Africa	2.6
36	Guinea Bissau	2.6
38	Gambia	2.5
39	Morocco	2.3
40	Cameroon	2.1
40	Cote d'Ivoire	2.1
42	Sudan	2
43	Botswana	1.8
43	Zimbabwe	1.8
45	Algeria	1.7
45	Nigeria	1.7
47	Burkina Faso	1.5
48	Liberia	1.3
49	Ghana	1.2
49	Mauritania	1.2
49	Libya	1.2
52	Malawi	1.1
53	Mayotte (France)	1
53	Zambia	1

Source: World Prison Brief: www.prisonstudies.org/highest-to-lowest/prison-population-total

From the table above it shows that the percentage of female prisoners in relation to the general prison population range from 10.9% to 1.0%. With South Sudan having the highest female prison population of 10.9% and Zambia with the lowest of 1.0%. The table further revealed the percentage of female prisoners for other African thus: Central Africa Republic, 8.2%; Rwanda, 6.5%; Seychelles, 6.1%; Sao Tome, 5.1% while Benin Republic and Equatorial Guinea, 5%. Furthermore, Mauritius, 4.9%; Madagascar and Burundi, 4.5%; Uganda, 4%; Mozambique, 3.9%. The Republic of Guinea, Congo, and Egypt, 3.7%; Lesotho, 3.6%; Gabon, 3.5%; Tanzania and Kenya, 3.4%; Ethiopia and Sierra Leone, 3.3%; Niger, Democratic Republic of Congo and Comoros, 3%. Other countries Namibia, Swaziland and Senegal, 2.9%; Mali and Chad, 2.8%; Tunisia, Togo, ReUnion (France) and Angola, 2.7%; South Africa and Guinea Bissau, 2.6%; Gambia, 2.5%; Morocco, 2.3%; Cameroon and Cote D'Ivoire, 2.1%; Sudan, 2.0%; Botswana and Zimbabwe, 1.8%; Algeria and Nigeria, 1.7%; Burkina Faso, 1.5%; Liberia, 1.3%; Ghana, Mauritania and Libya, 1.2%; Malawi, 1.1% and Mayotte (France), 1.0%.

From table 5 above, the trend of female imprisonment over an average period of ten years was also indicated. According to the table twenty-six (26) African countries namely Algeria, Angola, Benin, Burkina Faso, Burundi, Cabo Verde, Cameroon, Democratic Republic of Congo, Egypt, Ethiopia. Other countries are Ghana, Guinea, Kenya, Madagascar, Malawi, Mauritania, Mauritius, Niger, Nigeria, Rwanda, Sao Tome, Senegal, Seychelles, Sierra Leone, South Africa, Togo and Uganda experienced an increase in the prison population trend. The table further revealed that eleven (11) countries namely Botswana, Lesotho, Liberia, Libya, Morocco, Mozambique, Namibia, Swaziland, Tanzania, Zambia, and Zimbabwe showed a downward trend in their female prison population.

7.5.2 Treatment and living conditions of women prisoners in Africa

Globally, the female prison population constitutes a minority of the total prison population. According to the World Prison Brief (2010), the current world female prisoners' population is 5.04% within the prison population. The female prison population in African countries is said to be lowest with a median of 2.8%.

The minority status of women prisoners in the total prison population has some implications. Such implications include the fact that majority of the prisons globally and particularly in Africa were

designed to cater for the needs of the male prison population, hence the inability of these prisons to cater for the special needs of women prisoners. Agomoh (2014) succeedingly opined that *'prisons are 'malestreamed'—constructed to cater largely for the male prison population without adequately reflecting a gender-sensitive approach thus unable to cater for the special needs of female'*. In essence, female prisoners are subjected to extra pain and punishment aside from imprisonment due to the fact that some of their basic needs may not be catered for in prisons. Fonetebo (2013) identified some basic needs of female prisoners to include food, health, sanitation and hygiene, and motherhood.

Another implication of the minority status of female prisoners is that the voices of female prisoners are seldom heard. *'They do not fit the typical image of a prisoner. They are not real prisoners'* (Moser, n.d) and not many studies have been conducted regarding female prisoners (Fonetebo, 2013:3)

Prison conditions of prisoners in general and female in particular vary from country to country (Esherick's 2007:93). This assertion was supported by Agomoh (2014:132) who opined that Africa is not a homogenous entity having a common legal framework and administration of criminal justice. I share the view of Esherick (2007) and Agomoh (2014) regarding the differences in prison conditions and treatment of prisoners. I am of the opinion that the colonial experience of each country could account for such differences as well as the political situation prevailing in such countries at any given time. For instance, the prison conditions in crisis-torn countries like Libya and Democratic Republic of Congo would differ from a relatively peaceful country like South Africa and Ghana.

However, there are certain common denominators that would characterise female prisoners in African countries. From the review of little available literature on conditions of female prisoners in African countries, the following observations were made.

Most of the African prisons do not meet international standards regarding the treatment of female prisoners. For instance, in the 2016 United States Department of State reports on human rights, highlighted the findings of a study conducted by The National Council for Human Rights (CNDH) of Morocco that the prison conditions in women's sections in Morocco often did not meet the 2010 United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for

Women Offenders. The CNDH study noted that health facilities were generally located in the men's sections, restricting access for female prisoners and that vocational training opportunity was limited for women. The study also noted that female prisoners faced discrimination from staff, including medical staff, on the basis of their gender.

The Bangkok Rules

On Personal hygiene, [Supplements rules 15 and 16 of the Standard Minimum Rules for the Treatment of Prisoners]

Rule 5 The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels, provided free of charge and a regular supply of water to be made available for the personal care of children and women involved in cooking and those who are pregnant, breastfeeding or menstruating.

On Health – care and Substance Abuse Treatment Programme (Rule 6 to 17)

[Supplements rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners]

For example:

Rule 6 The health screening of women prisoners shall include comprehensive screening to determine primary health care needs and also shall determine:

- (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also offer to test for HIV, with pre- and post-test counseling;
- (b) Mental health- care needs, including post-traumatic stress disorder and risk of suicide and self – harm;
- (c) The reproductive health history of the woman prisoner, including current or recent pregnancies, childbirth and any related reproductive issues;
- (d) The existence of drug dependency;

(e) Sexual abuse and other forms of violence that they may have suffered prior to admission

Mental health and care

Rule 12 Individualised, gender – sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health – care needs in prison or in noncustodial settings.

Nelson Mandela

Nelson Mandela Rule 1

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

Nelson Mandela Rule 42

General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.

Luanda Declaration Article 32 v states that women prisoners:

Be provided with the facilities and materials required to meet their specific hygiene needs and offered gender-specific health screening and care which accords with the rights to dignity and privacy, and the right to be seen by a female medical practitioner.

Treatment of Pregnant Women On Pregnant women, breastfeeding mothers and mothers with children in prison

[Supplements rule 23 of the Standard Minimum Rules for the Treatment of Prisoners]

Bangkok Rule 48

1. Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.
2. Women prisoners shall not be discouraged from breastfeeding their children unless there are specific health reasons to do so.
3. The medical and nutritional needs of women prisoners who have recently given birth, but whose babies are not with them in prison, shall be included in treatment programmes.

The prison condition of women prisoners in some African countries such as Zimbabwe, Cameroon, Sierra Leone and Tunisia was explored. The finding is presented below

7.5.4 Prison condition for women in Zimbabwe

Section 50(5) (d) of the Constitution states that: *‘Any person who is detained, including a sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including the opportunity for physical exercise and the provision, at State expense, of adequate accommodation, ablution facilities, personal hygiene, nutrition, appropriate reading material and medical treatment.’*

The following section will review existing conditions in prisons with regards to this constitutional provision, the Bangkok Rules, Nelson Mandela rules as well as the Luanda Declaration.

In Zimbabwe, there are only two female prisons. According to Rita Nyamupinga, a director of Female Prisoner Support Trust (FEMPRIST) *‘Mlondolozhi, Shurugwi, and Chikurubi are the only fully fledged female prisons in Zimbabwe. All the other prisons have a section that has been set aside for women and the conditions are not favorable to female inmates’.*

The living condition of women prisoners does not meet international standards. For instance, Musengezi & Stauntan (2003) reports that the living conditions of women prisoners are not conducive to the needs of women. According to the authors, the cells are dirty with toilets that could not be flushed from inside, severe constraints on the number, or even complete lack of

sanitary/menstrual pads. Other major features of female prisons in Zimbabwe include a shortage of soap both for making their clothes and blankets clean and restriction on the number of undergarments a prisoner could have. This does not comply with Rule 5 of the Bangkok Rules regarding personal hygiene, neither with Nelson Mandela Rule 42 regarding the general living conditions of prisoners generally. Likewise, this type of living conditions does not comply with the Article 32 v of the Luanda declaration. This living condition of female prisoners is also a negation of Section 50(5) of the constitution of Zimbabwe.

One of the main features of prison condition of women prisoners in Zimbabwe is overcrowding. An ex-woman prisoner describes the situation of women prisoners thus

'It is inhuman and completely degrading for 17 women to be packed into a cell that does not even have a toilet. Particularly because by 4 pm you are already locked up in the cell and it will only be opened in the morning between 6 and 7 am. I think it is particularly inhuman to force those women to relieve themselves in little containers that they have each cut around.'

This description of the conditions of women prisoners in Zimbabwe was in a study conducted by ZHRL with some other organisation in 2013. The implication of this is that there has not been an improvement in the living conditions of women prisoners in Zimbabwe between 2003 when Musengezi & Statuntan reported that the living conditions of women prisoners are not conducive and 2013 when the study of ZHLR was conducted. The ZHRL study also noted significant shortages of sanitary ware among female inmates. As a consequence of the shortages of sanitary pads, it was reported that some female makes use of pieces of cloth or blankets as sanitary pads and these unconventional methods often resulted in blocked sewages as the used materials were disposed of in the toilets (ZHRL, 2013:40). The situation regarding toiletries is also described as being deplorable. The ZHRL study reports that *'The situation is so bad that most of the toiletries used by inmates are provided by No- Governmental and religious*

The condition of women prisoners in Zimbabwe is dehumanising. This expression was captured in a statement by an activist who was detained in one of the female prisons who said *'the experiences of living in a cell with no ablution left her feeling like she was no longer a human being 'You end up feeling like hausisiri munhu (I was no longer a human being) I am nothing now. I am just a statistic''*.

In 2016, President Robert Mugabe of Zimbabwe granted amnesty releasing all convicted female prisoners except a few who are serving life sentence (Associated Press, 2016).

From the review of the literature, it was revealed that there is corruption among the staff. This is manifesting in prison staff withholding donations such as sanitary pads and toiletries made to prisoners by faith-based organisations and NGOs. Though the prison officials often claim that the donated materials are distributed to women prisoners. However, some inmates revealed to Daily News that the prison officials' claims are not true. One of the inmates was quoted *'three weeks ago, El Shaddai (a charitable organisation) came and donated 650 pants and 48X 4 pairs of socks but we are yet to receive the goods'* (Daily News, 2013). It was further revealed that the women prisoners could not complain about not getting the donated materials for the fear of being punished by the prison officials. In fact, it was discovered by Daily News that some prisoners that asked question were transferred to the Male Security prisons as a form of punishment

With reference to women prisoners who are pregnant, review of the literature revealed that in Zimbabwe, pregnant inmates are treated like any other female prisoner, without due recognition of their needs. For instance, the USDCR, 2015 claimed that officials did not provide pregnant and nursing mothers with additional care or food rations but the ZPCS solicited donations from NGOs and donors for additional provisions (U.S human rights report, 2015). This is in contradiction with the Bangkok Rules and predisposes the life of pregnant women prisoners to danger and even the life of the unborn baby.

Most prison facilities in Zimbabwe do not have facilities for both antenatal, delivery and post-natal care. Pregnant women prisoners are taken to public hospitals for delivery and it could be a dehumanising experience. This view was expressed by E. M, an ex-prisoner who served her jail term while pregnant; *'The joy of motherhood is lost by the insane conditions that prevail in prisons because they are unsuitable for nursing and pregnant mothers'* she said further:

"When my time to give birth was due, I was transferred to Harare Hospital where I was met with my own fair share of humiliation. The prison garb tells its own story to both the health professionals and other expecting mothers who instantly stigmatise you. The nurses utter all sorts of abusive words. I was made to walk all the way to the labor ward and only got attention from the nurses when the baby's head was out."

“It is depressing to give birth whilst you are in prison because of the conditions that we would be exposed to. The diet does not change for nursing mothers and many risks a lot of infections.

The prisons do not have post-natal care. You are forced to return to jail within 48 hours after giving birth at public health facilities together with the newly born baby and that is a challenge’

After giving birth at public health facilities, they are returned to jail with their newly born babies – sometimes as young as a day or two old. Unfortunately, prison facilities are not designed to support the post-natal care of either the mothers or the babies. The plight of older children incarcerated alongside their mothers is also serious since there are no proper facilities to cater for their early childhood development needs because the ZPS does not have a budget line for such support (Shout Africa Report, 5 November 2015).

From the few available literature on prison conditions and treatment of women prisoners, it is evident that the living conditions and treatment of women prisoners in Zimbabwe do not meet international standards; the women prisoners are not treated with the respect due to their inherent dignity and value as human beings and thus constitute an abuse of their rights

One noticeable feature is that the situation has been like this over a period of time and it seems nothing concrete has been done or being done to rectify the situation. With the philosophy of imprisonment changing from that of punishment to rehabilitation all over the world, it is doubtful if any form of rehabilitation could be achieved amongst women prisoners in Zimbabwe when one takes into consideration the inhumane and degrading living conditions of women prisoners in Zimbabwe.

7.5.4 Prison condition of women in Cameroon

The living conditions and treatment of female prisoners largely do not meet international standards. The findings of the few available literature are presented here under

Health

The medical care for female prisoners is inadequate. According to Noeseke, Kuaban, Amougou, Pibuello, and Pouillot (2006), prison health in Cameroon may be considered as substandard and

completely underfunded. In addition, prisons in Cameroon do not have enough medical personnel. For instance, Noeske et. al. (2006) confirmed that there were only eight medical doctors responsible for the country's entire prison population including guards. Another major feature in women prisons in Cameroon is the lack of medications. It needs to be mentioned that the lack of medication is not peculiar only to the women prison, it is a common phenomenon in all the prisons in Cameroon. This assertion was confirmed by a representative of an NGO who was a participant in a study and who has been assisting in providing medications for the female prisoners

'I don't think in PB enough attention is paid to the health conditions of the prisoners in general. I remember there was a time they had somebody versed in health care..... but I was told that that the person has gone out for a course so if they have an infirmary as such, I am not sure they have a qualified person there, even a nurse, I am not sure they have adequate drugs for basic ailments... Because I do carry antibiotics to the inmates. I have carried paracetamol and malaria drugs because they don't have those things. I don't know if the prison is really stocking drugs for the prisoners, because, I myself, I have carried drugs for the women and when I carry them for women, I don't carry them to prison authorities. I give one to one female prisoner..... if somebody has a headache you can help them with these drugs or if it is malaria you help them with drugs (Fontebo, 2013:265).

From the above narrative, it is evident that the medical care of women prisoners in Cameroon prisons is inadequate and does not meet international standards.

Bed and Beddings

There are inadequate bed and beddings for women prisoners in Cameroon. This inadequate situation regarding beddings constrains some women prisoners to sleep on damaged beds with no mattress and blankets. In some cases, women prisoners sleep on the floor, some in the toilet and some in the restroom(Atabong,2008:64). Some extreme cases of women prisoners sleeping under the bed of others were also reported. Fontebo (2013: 121) claimed that in some prisons female prisoners had to rent mattresses and bed sheets from male inmates for 750 FCFA (half a U.S dollar).

The issue of inadequate beddings has been a recurring decimal among women prisoners in Cameroon as the same situation was reported by The Special Rapporteur for Prisons and Detention

in 2002. Fontebo (2013:112) observed that eleven years after the inadequate beddings in women prisons still persist. This does not meet international standards as specified in the NMR, Luanda Declaration and the Bangkok declaration

Toilet facilities

Most of the toilets in the women's prison are not adequate, in fact, it was reported that most of the toilet facilities have been in use since the colonial times and it is the bucket type. One of the research participants in the study conducted by Fontebo indicated that women prisoners do not use the toilet but instead they use small buckets and transferred the waste to the toilet. Equally the researcher (Fontebo) observed that there was a strong stench from the toilet. The study further revealed that while some prisons had the flush system does not work and inmates have to carry water from outside the prison cell to flush. According to participants in her study, this becomes a serious problem when the prisoners have been locked up as water often flows into their cells and this result in a stench. The toilet condition of women prisoners is unhygienic, deprives them of their privacy, does not uphold their human dignity and could lead to an outbreak of epidemic in the prison.

Pregnant women

There are no special treatments for pregnant women in Cameroon prisons. Despite the fact that, on paper, pregnant and nursing mothers and children are not allowed in prisons in Cameroon, in practice, the situation is quite different (Fontebo,2013:229). According to CPC 27 (2), No woman with a child or who has been delivered may begin to serve her sentence until after six weeks after delivery. However, there are cases of women a prisoner who delivered a baby and was back in prison after 30 minutes

‘I was not authorised to sleep outside, so, as soon as I gave birth, 30 minutes after I had to come back to the prison with the baby, I came back and the baby was there with me until when the baby was 8 months old’. (Participant Dorothy (Fontebo, 2013)

In addition, there are no maternity facilities for delivery, women prisoners who are pregnant and want to deliver are taken to nearby hospitals. Fontebo reported that one of the participants in her study a delivered a baby inside the prison

Another challenge nursing mothers face in the prison is feeding their babies and getting medical attention for their children. There is no special food provision for babies living with their mothers in prison. As one would expect that a growing child would require specialised diet but there is no such provision in Cameroon prison. The situation is captured in the response of a nursing mother

'My child is a problem because to feed her, is a big problem. I need great help even from you.... The baby is constantly sick and does not have the right to be consulted in prison [since she is not a prisoner]. No one has checked her. I always call X to come and buy drugs for her' (Mercy in Fontebo, 2013:229)

Ventilation: The ventilation in prisons for women in Cameroon is inadequate as some of the cells do not have windows and for those that have windows, the sizes of the windows are too small (Fontenbo,2013:125).

Separation of categories

Male and female prisoners are often locked in the same prison yard but each section is demarcated either with a wall or wood. Fontebo (2013) observed that convicted persons and locked up with women who are awaiting trials and the excuse given for this is because the prisons are overcrowded (Wogaing &Abisis,2011). It was also observed that minor offenders are locked up with women prisoners. This is against international standards and could lead to so many forms of abuses

The treatment of women prisoners does not meet international standards and in most cases an abuse of the rights of these offenders. The peculiar need so f women prisoners are not provided for.

7.5.5 Sierra Leone

Treatment and living conditions of women prisoners in Sierra Leone

There is not much literature on the treatment and living conditions of women prisoners in Sierra Leone. The little information the researcher was able to obtain summarised below.

Living conditions

The living condition of women prisoners in Sierra Leone leaves much to be desired. It was reported that women in prison live in overcrowded cells. The Campaign for Human Rights and Development International (CHREDI) in The Sierra Leone Telegraph (2017) described the living conditions thus:

‘We have also received reports that these female prisoners are being kept in very cramped and degrading conditions at the Freetown female correctional center where they are awaiting trial. 78 of them are being kept within a space that was meant for not more than 10 people, forcing most of them to sleep on the floor. We are aware that many prisons and jails in the country expose prisoners to dangerous environmental conditions like extreme heat or cold, contaminated food, and a lack of basic sanitation. We are concerned that such overcrowding in prisons would only lead to increased violence, and the delivery of poor and inadequate medical care and other essential services’.

The living condition of women prisoners is further described to include, lack of pipe borne water, poor toilets facilities and only one medical doctor to check for health problems, substandard meals, poorly trained guards and prison administrators. With the poor state of the living condition of women prisoners in Sierra Leone. CHREDI concluded that correctional facilities in Sierra Leone are clearly supporting the popular notion that the justice system is built solely for punishment and not for rehabilitation

The position of CHREDI on the living conditions of women prisoners in Sierra Leone was earlier reported by Prison Watch. Prison Watch stated that with the exception of the FCCSL, conditions in detention centers in the rest of the country, including lighting and ventilation, for male prisoners, were generally better than for female prisoners (US human rights report, 2016:2).

Separation of categories

Concerning segregation of prisoners, there was compliance to not locking up female and male prisoners together. The USSD country report of 2016 mentioned that the Human Rights Commission of Sierra Leone (HRCSL) confirmed that as of October 2015 no prison or detention center facility held male and female prisoners together (USSD report, 2016:3). In a statement by

European Union External Action in January 2017, it was indicated that juveniles are still often detained together with adults; pre-trial detainees are held with convicted prisoners in most cases. Though the statement is generalised the researcher could not establish whether the statement applies to women prisoners.

Detention without trial. There were also reports of women who have been detained for over 48 months without trial.

The living conditions of women prisoners in Sierra Leone did not meet international standards. This type of treatment is an abuse of the fundamental human rights and dignity of the women prisoners. It is quite unfortunate that the situation seems to have been like that over a period of time and despite the position of the government of changing the philosophy of imprisonment to that of correction rather than punishment as new laws were introduced by the correctional service in 2014. According to Institute for War & Peace Reporting (2016), recent reforms to Sierra Leone's prison system have failed to bring much meaningful improvement

The treatment of women prisoner did not meet international standards

7.5.6 Tunisia

Living conditions and treatment of women prisoners

Around half of the female prison population is held in Manouba Women's Prison located on the outskirts of the capital Tunis and Messaadine Prison while other women prisoners are held in eight wings attached to men's prisons around the country (Penal Reform International, (PRI),2014:23).

Overcrowding is the main feature of women prisons in Tunisia. For instance, it was reported by PRI (2014:23) that women in Manouba Women's Prison are held in crowded group cells, often holding between 40 and 50 women. Likewise, in Messaadine Prison, women prisoners are said to be held in cramped conditions in overcrowded group cells in a building that was previously used for rehabilitative activities. This according to the PRI report was due to the fact that the female wing of the prison was burnt down during a revolution in Tunisia in 2010/11(PRI,2014:23).

In addition, it was reported by PRI that many of the women prisoners spend 23 hours a day in the group cells. The condition in these overcrowded cells is better imagined. The situation is more compounded with the prisoners spending 23 hours in their cells.

Though the PRI study was not designed to explore the living conditions of women prisoners in Tunisia, one could conclude from the report based on the reported overcrowding nature of the prisons that the hygienic condition and sanitary situation will be inadequate. It could also be inferred that there would be some degree of violence as well as the prevalence of skin diseases just to mention a few as a result of the overcrowding.

Regarding medical care, the PRI findings indicated that in Manouba Women's Prison there are two social workers and five assistants as well as a doctor (employed by the Ministry of Justice rather than the Ministry of Health) and a psychologist. A gynecologist visits once a week. Women are given a medical assessment upon arrival which includes an assessment by a psychologist and a social worker. In Messaadine, there is a social worker, two pharmacists and access to a female doctor and psychologist. This finding did not mention the adequacy or otherwise of the medical care available to women prisoners neither were the issue of medication mentioned.

The social worker informed PRI that the psychologist attached in the two female prisons in Tunisia provides help with adjusting to prison life rather than addressing mental health issues connected to offending behavior' (PRI,2014:29). In a nutshell, the mental health needs of women prisoners are not addressed. This is even obvious in the list of medical personnel available at these prisons that there are no mental health practitioners in the prisons. This implies that the mental health situation of women prisoners is not determined on and after being remanded in prison. The women prisoners' mental health is left unattended to and there could be an escalation as many of the participants in the PRI study confirmed that they are often depressed. The PRI study further revealed that many NGOs involved in reaching out to female offenders in Tunisia commented that there is insufficient psychological and psychiatric support for women prisoners.

Furthermore, the PRI report indicated that pre-trial and convicted prisoners in Manouba Women's Prison have very few opportunities to engage in activities and are locked in their group cells for long periods of the day save for a half an hour twice a day for exercise. This long stay inside the

cell without engaging in any productive activity will affect the emotional, psychological and mental well-being of women prisoners.

From the available literature, the treatment and living condition of women prisoners in Tunisia do not meet international standards.

Pregnant women and women with children in Tunisia

According to the Law No. 58/2008, 4 August 2008, pregnant women and nursing mothers in prison should be *'consigned to a special place with medical, psychological and social care for mother and child available; the space allocated to imprisoned pregnant women and nursing mothers is to be guarded by female guards in civilian clothes'*.

In 2011, a separate building for mothers and babies was constructed within the compound at Manouba Women's Prison but is not currently in use. The PRI team visited Manouba Women's Prison on 10 February, 2014 where there were nine children living with their mothers. They were held in a cramped and cold group cell with bunk beds and communal washing facilities and had almost no access to toys essential for their development nor to outside play and exercise (PRI,2014:24). The situation of children living with their mothers at the Messaadine Prison was not different as they were held in a small group cell and provided with some toys. Outside play was extremely limited and there were uniformed female staffs guarding them. Women in Messaadine are locked up for 23 hours of the day and their children have very few chances to leave the small group cell (PRI,2014:24). Locking up little children for 23 hours in a day without adequate facilities is inhumane and does not allow for proper physical, mental and physiological development of the children. It is even against the law of Tunisia which states that *'pregnant women and nursing mothers in prison should be consigned to a special place with medical, psychological and social care for mother and child available; the space allocated to imprisoned pregnant women and nursing mothers is to be guarded by female guards in civilian clothes'*. These children are made to suffer for what they know nothing about. The question that begs the mind is what does the future hold for children raised in this kind of environment? Taking into cognisance the tender and delicate nature of the earlier years of development. The prison condition of women prisoners in Tunisia does not meet international standards.

From the review of the literature on conditions of women in prison in Africa countries, it could be concluded that these conditions are a negation of various treaties and conventions regarding the treatment of female prisoners. It is quite unfortunate that with these dehumanising conditions, the much-desired reformation and successful reintegration of female prisoners is far from being realised

7.5.7. Babies and young children in prisons in African countries

There are babies and children in prisons in all over the world and in African countries as well. The continued stay of babies and young children with their mothers in a prison environment have become a contentious issue (Law, 2014). The issue of what happens to children when a parent is incarcerated is one that has received attention from governments and organizations around the world. This has raised some germane questions on the desirability or propriety or otherwise of keeping babies and young children with their mothers in a prison environment (Law,2014).

The African Charter on the Rights and Welfare of the Child in terms of Article 30 which states that '*States should provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of breaking the law*'. The implication of this is that African countries recognise the fact there are children staying with their mothers in prisons. However, the number of years these children can stay with their mothers in prison vary one country to the other.

The Nelson Mandela Rule 29 states that:

1.A decision to allow a child to stay with his or parents shall be based on the best interest of the child concerned. Where children are allowed to remain in prison with a parent, provision shall be made for:

- (a) internal and external child care facilities staffed by qualified persons, where the children shall be placed when they are not in the care of their parent;
- (b) child – specific – health- care services including health and screening upon admission and on – going monitoring of their developments by specialists

2. Children in prison with a parent with a parent shall never be treated as a prisoner (UNODC, Nelson Mandela,2015:9).

In the literature search, this study found out that African countries surveyed have laws stipulating the maximum period of time that children can reside with their mothers in the prison (Library of Congress,2015). The duration a child can reside with the mother in prison varies from one country

to another. For instance, Tunisia, Senegal allows only children under the age of 1 to reside in prison with their mothers. Similarly, countries such as Ethiopia, Nigeria, and Uganda permit children to reside in prison with their mothers until they are 18 months old. On the other hand, Botswana, Egypt, Libya, Namibia, South Africa and South Sudan allow children to stay with their mother in the prison for a period of two years, Morocco and Algeria allow for a period of three years while Kenya and Zambia places a maximum of 4 years for children to stay with their incarcerated mothers. A few countries use different or additional markers such as a breastfeeding period or weaning (Malawi and Zimbabwe) and an assessment of the best interest of the child (South Africa) for making admission and length of stay determinations. Once the children reach the legally imposed age limit, many of the African countries surveyed may place these children with a relative who is able and willing to assume responsibility, and in the absence of such an option, the children are placed in foster care or orphanages, while some countries put the children in the custody of appropriate social welfare agency.

The study further revealed that data on a number of children residing with their mothers is not readily available. For instance, I was able to get data from only 14 countries namely Benin Republic (100 children), Burundi (78 children as at 2016); Cameroon (5 children in Yaounde Central Prison as at 2012, No national data); Cote d'Ivoire (144 pregnant women and mothers of children under the age of three at the main prison as at July 2014); Egypt (35 children at the largest women prison in Cairo as at 2013); Ethiopia (496 children as at 2012). Furthermore, Kenya (300 children at 2013); Mali (269 children as at 2009); Morocco (84 children as at 2016) Nigeria (69 children as at 2013); South Africa (282 children as at 2013). Others are Tanzania (13 children as at 2011); Uganda (239 as at 2016); Zambia (412 children as at 2011) and Zimbabwe (29 children as at 2014)

This section provides a tabular presentation of countries that and those that do not have statistical information regarding how many children reside with a parent in African countries' prisons

Table 6 showing country and population of children living with their mothers in prison

Country	Year	Number
Algeria	No data	-
Angola		
Benin Republic	1	100
Botswana	No statistical information	
Burkina Faso	-	
Burundi	2016	78
Carbos Verde		
Cameroon	-No national data	5 inCentral Prison as at 2012
Central Africa republic		
Chad		
Comoros		
The Democratic Republic of the Congo		
Republic of the Congo		
Cote D'Ivoire	July 2014	144 pregnant woman and mothers of children under the age of 3 at the main prison
Djibouti		
Egypt	2013	35 children at the largest women prison in Cairo
Equatorial Guinea		
Eritrea		
Ethiopia	2012	496
Gabon		
The Gambia		
Ghana		

Guinea		
Guinea- Bissau		
Kenya	2013	300
Lesotho		
Liberia		
Libya	N/S	
Madagascar		
Malawi		
Mali	2009	69
Mauritania		
Mauritius		
Morocco	N/A	
Mozambique		
Namibia	N/A	
Niger		
Nigeria	2013	69
Rwanda		
Sao Tome		
Senegal		
Seychelles		
Sierra Leone	N/A	
Somalia		
South Africa	2013	282
South Sudan		
Sudan		
Swaziland		
Tanzania	2011	13
Togo		
Tunisia		
Uganda	2016	239

Zambia	2011	412
Zimbabwe	2014	29

Source: Compiled by the researcher based on information retrieved from Library Congress

7.5.8 Living and health conditions of babies residing with their mothers in prison

Despite the provisions in African Charter on the Rights and Welfare of the Child in terms of Article 30 and the Nelson Mandela Rules 29 regarding babies residing with their mothers in the prison, most prisons in African countries do not comply with the provisions. There is a sharp contrast between policy and practice in most prisons in Africa the living conditions of babies residing with their mothers in prison and does not meet international standards. This could be deduced from a review of the few existing literature regarding babies residing with their mothers in prison. For instance, a 2013 Zambia Human Rights Commission report indicated that no special accommodation was made for young children who accompanied their mothers to prison. The report specifically stated that the prison service did not have special diets for children who reside in prison with their mothers at the time of the visit. Inmate mothers shared their food rations with their children and clothing, bathing or washing soaps were not provided for these children. In Nigeria, generally prisons had no facilities to care for pregnant women or nursing mothers. In Cameroon, Fontebo (2013) in her study also showed that both the infrastructure and general provision for pregnant and nursing mothers are inadequate, he stated further there are no special care measures for pregnant women, mothers with the children inside the prison. The situation is not different in Zimbabwe prisons; officials did not provide pregnant women and nursing mothers with the additional care of food rations. The children living with their mothers in prisons in Tanzania live in poor condition with no special diet and then forced to share food with their mothers (Commission for human rights and good governance, CHRAGG, 2011). In South Africa, female offenders with children, lactating mothers and pregnant women with special dietary needs were catered for through the provision of special diets as prescribed by a medical doctor in South Africa. Necessary arrangements were made to ensure that infants received their food even after lock up hours (3rd Economic and Social Rights, 1999:372). The veracity of this information could not be verified. The need to verify this information is predicated on the fact that the date of the report is 1999. One wonders if the same situation prevails in recent times.

In addition, children residing with their mothers in prison do not have access to basic health needs. The results of a survey of women and children in prisons conducted by CURE-Nigeria and released in March 2016 revealed many children in custody did not receive routine immunizations, and authorities made few provisions to accommodate their physical needs, to include hygiene items, proper bedding, proper food, and recreation areas. According to a report by the NGO CURE-Nigeria, female inmates largely relied on charitable organizations to obtain female hygiene items (U. S human rights report,2016). In Senegal, infants and newborns were often kept in prison with their mothers until age one, with no special cells, additional medical provisions, or extra food rations. Children in prison with their mothers are subjected to unhealthy conditions.

These unhealthy conditions predispose these children to adverse health conditions. For example, Sloth-Nielsen (2008), made reports of interview of some female inmates in Nigeria that alluded to poor health conditions in the detention of small children, leading to ailments such as colds, coughs, constipation, rashes and difficulties in breathing. However, this unhealthy condition of children incarcerated with their mother is not exclusive to prisons in Nigeria, as Konda (2011) noted that a female in the Buea central prison in Cameroon complained about the poor state of health of her six-month-old son as a result of inadequate nutrition. Likewise, in prisons in Sudan, it seems that children beyond breastfeeding age did not have ready access to food in prisons.

However, the situation in Egypt appears to be different, as pregnant women are treated with care after the first six months of pregnancy with regards to food, work, and sleeping hours, and until the baby has been delivered. The mother and her child must be given special medical care, food, clothing and respite (Salim,2006). In addition, special diets, high in protein and kilojoules, were provided for the infants. Equally, Mahmoud (2006) confirmed that arrangements were made by the prison authority to ensure that infants received their food after lock-up hours in addition to the meals they received during the day.

In Kenya, a daycare center was built for children residing with their mothers at the only maximum security female institution, Langata Women's Prison. The prison is housing women convicted of murder, assault, and drug smuggling, along with others found guilty of petty crimes. The purpose of building this daycare center was to make life a bit comfortable for these innocent children and to afford them the opportunity to have access to basic amenities that could help with their growth and have access to early childhood education. This point was buttressed by Jane Kuria the CEO of

the Faraja Foundation an NGO who says *'that the new center will greatly improve the children's lives. Basically, they can spend the whole day, eating nutritious food alone, play alone amongst themselves, and in the evening, go back to be with their mothers. That is what drove us to do this project'* (VOA,2013).

In South Africa, prison facilities were not really meant to cater for babies. However, there are many pieces of legislation that enjoined the Department of Correctional Services to provide humane facilities and set out principles relating to the care and protection of children, which were taken into account, including the Imbeleko project. According to Joey Coetzee, the Deputy Commissioner, Department of Correctional Services, sixteen female correctional centers had now been designed with the mother and baby units to accommodate children (Parliamentary Monitoring Group,2014). The Uganda Prison Service had a budget to accommodate pregnant women and mothers with infants, and pregnant mothers received antenatal care services and special diets (U.S report on human rights, 2016). The treatment and living conditions of babies with their mothers in prisons in African countries does not satisfy the minimum requirement of the African Charter and Nelson Mandela rule. It is saddening that innocent children are subjected to the degrading and inhumane treatment of imprisonment for a no fault of theirs. The question that agitates my mind is what does the future hold for these innocent children? Cant the government of these countries establish a special centre for these children?

7.6 Prisoners on death sentence (death row)

In this section the study defined death penalty, gave an overview of death sentence in Africa countries viz a viz international and regional treaties and legislation, presented the current data regarding the number of prisoners on the death row. The treatment and living conditions of prisoners on the death row in some countries in Africa namely, Democratic Republic of Congo, Egypt, Ghana, Zimbabwe was explored. The treatment and living conditions of prisoners on the death row was evaluated based on the minimum requirements of treatment of prisoners as stipulated by the Nelson Mandela Rules and the Luanda declaration

Definition

The term prisoners under death sentence cover all prisoners who have been sentenced to death by a court of law and who are held in prison awaiting execution, pending a decision by the higher

courts confirming or commuting the sentence, or pending a decision by legislators to abolish the death penalty. Such prisoners include those who are awaiting the decision of an appeal court, those who are awaiting the result of an application for pardon or commutation and those who are being held in prison due to a moratorium or executions in the country of imprisonment (UNODC, 2009:157).

7.6.1 An overview of death penalty in African countries

There a number of international and regional treaties which oblige States that have ratified them to abolish the death penalty. They include the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), They include the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and Protocol No. 13 to the European Convention of Human Rights. The Second Optional Protocol to the ICCPR and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty provide for the abolition of the death penalty, but allow states to retain it in wartime as an exception (UNODC,2009:158).

On the regional basis, The African Charter on Human and Peoples' Rights (African Charter) makes no mention of the death penalty or the need to abolish it. However, Article 4 of the African Charter states that *'human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'* (African Commission on Human and Peoples' Rights,2005). The Article 4 of the African Charter has been one of the bases of the argument for and against the death penalty in Africa. Furthermore, only 15 African countries have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty. These 15 States include Mozambique that became a state party on July 21, 1993; Namibia on November 28, 1994; Seychelles on December 15, 1994; Cape Verde on May 19, 2000; South Africa on August 28, 2002; and Djibouti on February 5, 2003. Other countries are Angola on September 24,2013; Benin, July 5,2012; Gabon April 2,2014a; Guinea Bissau, September 12,2000; Madagascar, September 24,2012; Rwanda, December 15, 2008; Sao Tome and Principe; January 10, 2017; Togo, September 14, 2016a and Liberia, September 16,2005 (United Nations Treaty Collection, 2018). However,

only 5 African countries have signed the treaty. These countries that have signed the treaty are, Angola, September 24, 2013; Gambia, September 20, 2017; Guinea Bissau, September 12, 2000; Madagascar, September 24, 2012 and Sao Tome and Principe, September 6, 2000 (United Nations Treaty Collection, 2018). At its 56th ordinary session, the African Commission on Human and Peoples Rights (ACHPR) put the abolition of the death penalty at the heart of its debates by including a panel discussion on capital punishment in Africa as part of the official agenda of the meeting on April 22, 2015 (Federation Internationale De L'actate, 2015), and adopted a draft regional treaty to help African Union member states move away from capital punishment (World Coalition against the Death Penalty, 2015). So one can conclude that as a regional body there is no treaty abolishing the death penalty. In fact, some African countries such as Nigeria, Ghana, and Zimbabwe just to mention a few still retain the death penalty in their constitutions and other penal legislation.

It is of importance to note and mention that some African countries have abolished the death penalty for all crimes as of December 2014. These countries are Angola, Burundi, Cape Verde, Cote d'Ivoire, Djibouti, Gabon, Guinea Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa and Togo. In January 2015, the Republic of Congo abolished the death penalty (Amnesty International, 2015).

In January 2016, the Constitutional Court of Benin ruled that, in order to comply with the country's international human rights obligations, all laws providing for the death penalty were void and death sentences could no longer be imposed in the country (AI Report, 2017). Later in the year Guinea introduced a new Criminal Code which removed the death penalty as an applicable punishment for ordinary crimes. While Guinea's Military Code still provides for the death penalty for exceptional crimes, a bill to remove all death penalty provisions from the Military Code is pending in the country's National Assembly and Guinea abolished the death penalty (Amnesty International Report, 2017).

The death sentences of prisoners on the death row in some African countries were commuted in 2016. Leading the pack of countries that commuted death sentences of prisoners is Kenya whose President commuted to life sentence all 2 747 prisoners on death row. Nigeria (32); Sudan (7); Mauritania (1) and Ghana (1) (Amnesty International 2017).

According to the Amnesty International report on execution carried out in 2016, Nigeria and Botswana resumed execution of convicts in 2016. Nigeria in December executed 3 prisoners by hanging in Edo State, Nigeria, and, Botswana executed 1 prisoner

This study provides the data of countries, some number of execution recorded in 2016, recorded death sentences in 2016 and the statistics of people known to be under a death sentence as at the end of 2016.

Table 7: showing countries, number of execution recorded in 2016 and statistics of people known to be under sentence of death as at the end of 2016

Countries	2016 RECORDED EXECUTIONS	2016 RECORDED DEATH SENTENCES	PEOPLE KNOWN TO BE UNDER SENTENCE OF DEATH AT THE END OF 2016
Algeria	0	50	+
Benin	0	0	14
Botswana	1	0	1
Burkina Faso	0	0	12
Cameroon	0	160+	+
Central Africa Republic	0	0	
Chad	0	0	
Democratic Republic of Congo	0	98+	
Egypt	44	237+	-
Equatorial Guinea	0	0	
Ethiopia	0	3	10
Gambia	0	0	
Ghana	0	17	148
Guinea	0	0	12

Kenya	0	24+	2+
Lesotho	0	0	
Liberia	0	5+	+
Libya	unconfirmed	1+	Unconfirmed
Malawi	0	1	28
Mali	0	30	53
Mauritania	0	0	77
Morocco/Western Sahara	0	6	92+
Niger	0	11	+
Nigeria	3	527	1979
Sierra Leone	0	5	18
Somalia	14	60	100+
Somalia	14	60	100+
South Sudan	+	+	+
Swaziland	0	0	
Tanzania	0	19	491
Tunisia	0	44	+
Uganda	0	0	208
Zambia	0	101	157
Zimbabwe	0	8	97

Source: Amnesty International Report 2016/2017

7.6.2 Case studies of the living condition and treatment of prisoners on the death sentence

Safeguards protecting the rights of prisoners under sentence of death are set out in ICCPR and Safeguards Guaranteeing Protection for the Rights of those Facing the Death Penalty, as well as safeguards contained in Social and Economic Council Resolutions of 1989/64 of 24 May 1989; Resolution 1996/15 of 23 July 1996 and Resolution 2005/59 of 20 April, 2005. Unfortunately, the provisions of these treaties are not followed in a large number of cases worldwide (United Nations and Social Council, 2005). The living conditions and treatment of prisoners living on the death row in most countries of the world are poor and that of Africa seems to be more pathetic (Cornell

Law School, 2012). It needs to be mentioned that there is a dearth of literature in relation to treatment and living conditions of prisoners on the death row

In the next section, the study presented the case studies of treatment and living conditions of prisoners on the death row in Democratic Republic of Congo, Egypt, Ghana, and Zimbabwe. There is a need to mention that there is a dearth of literature on prisoners living under death sentence in prisons in African countries.

7.6.2.1 Death penalty in Democratic Republic of Congo

The Democratic Republic of Congo (DRC) retains the death penalty in her legislation to date. Proponents of death penalty hold the view that capital punishment serves an efficient tool for deterrence as well as a solution to the recurring criminal phenomenon plaguing the country's Eastern parts (Fataki & Uvira, 2016).

In Democratic Republic of Congo, there exist three main legal instruments that gives endorsement to the death penalty within the Congolese legislation. These are the 1940 ordinary Penal Code, allowing the death penalty for crimes such as assassination or armed robbery; the 2002 (2015 amended) military Penal Code expanding the list of crimes incurring the death penalty to spying, terrorist acts, desertion, among others; and the 1898 decree defining methods of execution (by hanging for civilians and by a firing squad for the members of the military). There are categories of people who are exempted from a death sentence. These are individuals below the age of 18 at the time of the crime, pregnant women, and women with children.

On 30 October 2013, the Democratic Republic of Congo was reviewed under the Universal Periodic Review of the UN Human Rights Council. The Government said that the Congo had not applied the death penalty since 1982. As such, the country was considered to be de facto abolitionist (HandsoffCain, 2017). Though the government of DRC has not executed since a moratorium was established in 2003, however courts in DRC keep on giving death penalty as a sentence. For example, a Congolese court sentenced nine rebels to death on March 14, 2017 (AP, Africa Feeds, 2017)

Population: There is no accurate data on the number of prisoners on the death row in DRC. It was observed in 2010 by the U.N Special Rapporteur on Extra-Judicial, Summary or Arbitrary

executions that prison authorities in DRC do not keep accurate records of sentences of convicted criminals and that the total number of prisons and prisoners in the country is not known (U.N.G.A,2010). However, the Cornell Centre on Death Penalty Worldwide (2010) gave an estimated figure of between 330-500. This estimate is based on the premise that at least 94 death sentences have been passed between 2005 when the estimated figure ranged between 240-400 (Begot & Ngoji, 2005). Not having accurate data of people on the death row could lead to abuse such as extra judicial killings and inability to account for lives of prisoners. This is against international standards.

Treatment and living conditions of prisoners on the death row in DRC

There is a dearth of information on the treatment and living conditions of prisoners on the death row in DRC. The few information available are the general conditions of the prisons, death row inmates are usually exposed to the same environment as the general prison population—and conditions are often worse (Cornell Law School,2012). The study by Cornell Law School on death row condition in some countries of the world including DRC identified overcrowding, lack of medical care, inmate –on –inmate violence as well as unsanitary condition as main features of the living conditions of prisoners on the death row in DRC. Likewise, a legal charity, Reprieve, representing a British soldier that is on the death row in one of the prisons in DRC submit that the prison conditions for death row prisoners is deplorable and is characterised by the dirty mattress, overcrowding, sharing with large number of other prisoners in small cells. The living condition, Reprieve said exacerbates the mental health condition of their clients (Reprieve,2014). The implication of this is that a prisoner with mental health challenges is locked up in the same cell with other prisoners. This is exposing the life of the mental health patient to danger as well as the life other prisoners in the cell. To further compound the problem there are no mental health facilities to treat mental health patients. The treatment and living conditions of prisoners on the death row in DRC does not meet international standards. It need be mentioned that the Prime Minister of Norway announced that the British soldier on the death row had returned home after eight years (Reprieve, 2017). He was released on medical ground. The treatment and conditions of prisoners in the DRC does not meet international standard.

7.6.2.2 Legal provision for death penalty in Egypt

The Egyptian Constitution does not refer to the death penalty. The constitution guarantees the rights of individuals. However, all these rights and guarantees of individual freedoms recognised by the Constitution are rendered null and void by the emergency laws by virtue of the state of emergency (International Federation for Human Rights, FIDH,2005).The state of emergency allowed the then President Mubarak, through presidential decrees, to promulgate anti-terrorist laws restricting individual freedoms and justifying violations of the fundamental rights of persons, that are nevertheless guaranteed by the Constitution and by the International Covenant on Civil and Political Rights (ICCPR) ratified by Egypt in January 1982.

According to Reprieve (2015), since the military seized power in 2013, they have enacted various pieces of legislation which have expanded the scope of criminal offenses in Egypt, apparently with the aim of stamping out political opposition and pro-democracy voices. The legislation enacted after the military took over power in Egypt include:

- Protest Law which was enacted in 2013, criminalises any form of protest or public assembly that has not first been authorised by the Ministry of the Interior. Non-compliance with this law enables security forces to use excessive force to disperse demonstrations and arrest participants. A lot of activists who were involved in the 2011 uprising and in the years beyond, as well as supporters of Mohamed Morsi and the Muslim Brotherhood, have been charged under this law
- Counter terrorism Law: The more recent ratification of a new Counter-Terrorism Law includes a range of vague, imprecise and ill-defined crimes and increases the scope of criminal offenses. Peaceful exercise of freedom of expression may be considered illegal, as will the publishing of any information about "terrorist organisations" that is contrary to statements made by the authorities (Reprieve,2015)

The Penal Code prescribes the death penalty for the following crimes and offenses:

- attack on the external security of the State (articles 77 to 80, Penal Code)
- attack on the internal security of the State (Article 83, PC)
- crimes and offenses coming under the "anti-terrorist" legislation (articles 86 to 102, PC)

- premeditated murder. Accomplices are liable to the same punishment (articles 230 to 235, PC)
- abduction and rape of a person of the female sex (article 290, PC) - perjury leading to the sentencing and execution of a person charged with an offense (Article 295, PC)
- violations of the law on drugs: in accordance with Law no. 182 of 1960 as amended by Law no.122 of 1989. Article 33 of this Law stipulates the death penalty for the import of drugs without prior authorisation. Growing, producing, selling, keeping and transporting, all come under the crime of drug trafficking and are punishable by death. Any person who fits out and uses premises for drug-taking incurs the same penalty
- crimes and offenses relating to keeping weapons and ammunition (Law no. 394 of 1954). Keeping weapons, ammunition or explosives without prior authorisation is punishable by forced labour for a fixed period or for life. The penalty incurred is capital punishment if the arms are being kept in order to attack the public order and security or to undermine the establishment, the principles of the Constitution, or the fundamental system of the Institutions, national unity, or the social peace. The application of the death penalty is therefore very wide

Criminal courts in Egypt continued to hand down death sentences for murder, rape, drugs trafficking, armed robbery and "terrorism". People were executed for murder and other criminal offenses (A I, 2016/2017 Report).

Civilians are being tried and convicted in military courts. This is against international laws. Egypt's military courts violate several key elements of due process, including the defendants' right to be informed of the charges against them, having access to a lawyer, to have a lawyer present during interrogations, and to be brought promptly before a judge. Judges in the military justice system are military officers subject to a chain of command, without the independence to ignore instructions by superiors (HRW,2017)

According to Stork, Deputy Middle East Director at Human Rights '*Military courts should never be used against civilians, and they should certainly not be allowed to condemn civilians to death*' (HRW,2017). The Human Rights Committee, the international expert body that interprets the International Covenant on Civil and Political Rights, which Egypt ratified in 1982, has stated that civilians should be tried by military courts only under exceptional circumstances and only under

exceptional circumstances and only under conditions that genuinely afford the full due process. The African Commission on Human and Peoples' Rights, which interprets the African Charter on Human and Peoples' Rights, ratified by Egypt in 1984, has stated that civilians should never face a military trial and that military courts should not have the power to impose the death penalty. The African Principles and Guidelines on the Rights a Fair Trial and Legal Assistance, adopted in 2003, prohibit military trial of civilians under all circumstances' (HRW,2017).

Treatment and living conditions of prisoners on the death row in Egypt

Detainees on the death row in Egypt are kept in degrading, unsanitary, and mentally harming conditions. The Committee of Justice stated this in a press release for Justice based on interviews with relatives of families of three of the six detainees on death row at Alabadia Prison. The living condition of the detainees is described here in

'Every three detainees are imprisoned together in an estimated 1.5×3 meters ' cell for more than 23 hours a day. The cell has no electronic lights and no light comes from the outside. They only feel the sunlight for about half an hour a day when they are brought out to defecate. The prison administration gives them plastic bags to defecate in for the remaining 23 hours that they are locked in the cell. These plastic bags are not removed right away but are removed the next time the guards open the door. The detainees complained to their families of the intensive smell due to the plastic bags that are left in the cell for hours coupled with the lack of ventilation and immense heat. The temperature in Damnhour where the prison is located currently reaches 42 °c. Subsequently, the detainees eat the barest minimum as to prevent themselves from using the plastic bags. This coupled with the restriction on admitting food by families into the prison caused the detainees to drastically lose weight. Their clothes are also kept dirty and not regularly cleaned. According to the family of Mohammed Yousef Al Sabaa, he would put aside an outfit to wear to the visits to not show his family the dirty conditions they are kept in'.

According to The Committee on Justice.

'keeping the detainees in these degrading, unsanitary, and mentally harming conditions violates Egypt's legal obligation under Egyptian and international laws and norms'. In article 56, the Egyptian constitution affirms that a prison is a place of correction and rehabilitation and that

actions inconsistent with human dignity or which endanger human health shall be prohibited (Committee for Justice, August 23, 2017).

The living condition of women on death row in Egypt is not different from their male counterpart. This was evident in the account of a woman on the death row at Qanater Women's Prison. In an interview with Middle East Watch (MEW) (Organisation) she disclosed that her cell measures about 10X7 feet, the cell has no toilet and there is no faucet to supply running water. The lighting in the cell is not adequate as the only source of light comes from a 2X2 foot barred window on the rear wall of the cells. Furthermore, she said she is let out of the cell twice daily for one hour in the morning and another one-hour in the afternoon. Regarding toilet facilities, a metal bucket serves as her toilet during her long periods of daily confinement. She is allowed visits from her family once a month for 30 minutes. As a condemned prisoner, she eats the prison food, as she is not allowed to cook her own food. The prison food comprises of lentils, rice or fous and four loaves of flat Arabic bread daily. Her food supply is supplemented by the food her children bring during their visit to her (MEW,1993). The adequacy or otherwise of the food in terms of quality and quantity could not be established

The treatment and living condition of women on the death row in Egypt does not meet international standards in all ramifications including accommodation, ventilation, lighting, toilet facilities, recreation, and food. This type of treatment amounts to degrading, inhumane treatment and could be regarded as torture.

Egypt carried out at least 44 executions in 2016. Adel Habara was executed in December 2016; his conviction was related to the 2013 attack and killings of security forces in North Sinai Governorate. Eight women were executed in relation to offenses that included murder. Another 35 people were executed; the men had been convicted of offenses that included robbery linked to murder, and murder (AI Report,2016/2017).

7.6.3 Death Penalty in Ghana

There is a dearth of literature on prisoners on the death row in Ghana, the major source of information which is current this researcher was able to obtain was the finding of a research conducted by a delegation of AI, from 28 August to 3 September 2016 at Nsawam Prison, the main detention facility for prisoners on the death row. The AI delegation interviewed 101 prisoners, 98

men and three women and a further visit to Nsawam Prison on 21 March 2017 to conduct a follow-up interviews with prison officials and death row inmates. During this follow-up visit, a further six men on the death row were interviewed.

Legal provision for the death penalty in Ghana.

In Ghana, the death penalty is legal and has its authority from the constitution which is the supreme law of Ghana.

The 1992 Ghanaian Constitution explicitly provides for executions: *"No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offense under the laws of Ghana of which he has been convicted"*.

The Constitution of Ghana provides for the death sentence for crimes related to treason: ‘Any person who –

- (a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this constitution or any part of it, or attempts to do any such act; or
- (b) aids and abets in any manner any person referred to in paragraph (a) of this clause; commits the offence of high treason and shall, upon conviction, be sentenced to suffer death”.

The Ghanaian Criminal Code also sets out that individuals convicted of murder ‘*shall be liable to suffer death attempt to commit murder, genocide, treason, and smuggling of gold and diamonds are punishable by death. In addition, under the Armed Forces Acts of 1963, military personnel may impose the death penalty for treason and mutiny in time of war*’.

Executions can be carried out by “(a) hanging; (b) lethal injection; (c) electrocution; (d) gas chamber; or (e) any other method determined by the court”, as established in the Criminal Procedure Code.

Ghana has not signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) which requires a State not to carry out executions and to ‘take all necessary measures to abolish the death penalty within its jurisdiction’

Population: There are 148 prisoners on the death row in Ghana as at December 30, 2016. These official statistics was given to Amnesty International by the Ghana Prison Service. The data is comprised of 144 men and four women all convicted of murder. A further breakdown of this data indicated that seven of those on the death row in Ghana were foreign nationals – five from Togo, one from Burkina Faso and one from Nigeria. One wonders if the embassies of these countries are aware of their sentence. In 2016, 17 death sentences were imposed. This category of prisoners is all locked up at Nsawam Prison which is about 2 hours drive from the capital Accra. Sixty-two of them have been there for more than five years (Amnesty International, 2017). There has not been an execution in Ghana since 1993, yet people are still sentenced to death by the courts.

7.6.3.1 Treatment and living conditions of prisoners on the death sentence in Ghana

The living condition of prisoners on the death row in Ghana is poor and does not meet international standards as specified by the Nelson Mandela Rules and Luanda Declaration. The situation report as highlighted by AI is presented below:

Accommodation:

The accommodation of prisoners of death row in men's section of Nsawamthe prison was described by the Ghana Prison Service to AI as containing death row sections of the men's prison contain 24 small cells holding four prisoners each; four medium-sized cells with eight prisoners each and two large cells with sixteen prisoners each. However, the cells are said to be overcrowded and poorly maintained.

In addition, the toilet facilities are inadequate, it was revealed to AI during a research that there are just seven toilets being shared by over 100 prisoners. Likewise, the ventilation in these cells is inadequate. For instance, some few inmates on the death row told AI that in each cell, there is only one window locked by metal doors and cannot be opened. The only ventilation is being provided through small holes in the cell walls. The Special Rapporteur on Torture expressed concerns about the '*small, overcrowded, dark and poorly ventilated cell blocks.*' In all ramifications, this treatment and living condition does not meet international standards as stipulated by the Nelson Mandela rules and Luanda declaration. This is also an abuse of the fundamental human right to good life.

Medical Care

The medical care for the prisoner on the death row in Nsawam prison is inadequate as they have to contend with the lack of basic medical services and insufficient medical personnel at the prison. For the whole prison, there were only four nurses. This number is grossly inadequate. One of the prisoners on the death row in Nsawam prison interviewed informed delegates from AI of the difficulty they encounter in accessing medication from the prison infirmary. An inmate was quoted as saying *'I can get medication from the infirmary, but there are times that there are none'*. Another prisoner on the death row said *'the infirmary does not contain the specific medicine he needs for his condition and he does not have sufficient money to buy the medication'*. This implies that the inmate is left to suffer from his health deteriorating. It was also revealed that most prison inmates rely on their family members for their medication. A statement by another inmate indicated that inmates live in a state of anxiety and fear in getting ill. He told AI that *'this place is unbearable, when you feel sick at night in the cell and the officer does not come to assist you, you can even die'*. This type of situation is pathetic and calls for urgent attention.

The inadequate health care being experienced by inmates on the death row in Nasawam prison negates the letter and principle of Nelson Mandela rules and Luanda declaration. It is degrading, inhumane and amounts to torture as well as an infringement to access to adequate medical care as well as the right to life.

Food

Majority of the one hundred and nine prison on the death row in Nasawm prison submitted that the quality and quantity of food given to them was inadequate in terms of quantity and quality in terms of nutritional value. Again this does not meet international standards as stipulated by the Nelson Mandela Rule and Luanda declaration which requires that prisoners should be provided with adequate food that is nutritious. Inability to provide food in right quantity and of nutritional value predisposes inmates to diseases and infection as their immune system will be low.

Isolation

'You cannot mix others. Death row is a prison within a prison'.

The AI interview of prisoners on the death row further indicated that they do experience a great deal of isolation, as they are not permitted to mix with other category of prisoners. For instance, prisoners on the death row are not permitted to participate in educational and recreational activities going on in the prison. Several of the prisoners on the death row informed AI of difficulties they often encounter in mixing with other prisoners as well as having access to educational and recreational activities. One of the prisoners was quoted as saying, *'I want to go to school but as a condemned prisoner, I don't have that right. My hobby used to be football, if they could give me chance, I would play.* This exemplifies the frustration of someone who desires to go to acquire education despite being on the death row and use his skills as a football player, this treatment could be described as discriminatory and definitely increase the sense of isolation.

The feeling of isolation is not only limited to the men on the death row. The women on the death row are also locked up in a different section of the female wing of Nsawam Prison. One of the respondents of the study by AI said *'I cannot mix with other prisoners* while another one said *'I could not go to the main yard without being accompanied by a prison official.*

Women on the death row are also exempted from educational and recreational activities. One of the women who has been on the death row for nine years confirmed to AI *' I don't do anything, I sweep and sit down'*. Without any doubt, this type of treatment increases their isolation and could be stressful, as well as impact negatively on their mental and psychological well being of the prisoners. This type of treatment does not meet international standards

Visitation: Though the prison authority permit family members to visit prisoners on the death row, the visit is not always private as they are closely monitored by prison officials who take note of the conversation. The AI finding indicated that only a few of the prisoners on the death row do have their family members visit them. This is not unexpected as family members have to travel over a distance to get to Nsawam and such traveling has cost implications. Lack of visits to prisoners on the death row puts additional stresses they could feel abandoned and rejected. Studies have shown that family visits could lead to positive outcomes (De Claire& Dixon 2017). These positive outcomes of family visits to prisoners, include the improved mental health of prisoners

and other family members, an increased probability of the family remaining together post-release (Hairston, 1991), and an improved level of social adjustment during imprisonment and after release (Casey-Avecedo & Bakken, 2002).

Furthermore, The Special Rapporteur on Torture (2012) noted that several inmates on the death row *'show signs of severe mental and physical trauma'*. This situation was also confirmed by AI report that indicated that many men and women on the death row in Nsawam Prison showed signs of distress, with many of them crying during interviews while describing their anxieties about their conditions. Some of their expressions were described by AI thus

'my friends have made progress, but my life is pressing me down'

'Even when I sleep, I think about this. I'm worried at how to maintain my family. I feel depressed. I cry.'

'I feel if I were to be killed it would have been better than being here'.

'One minute in prison is like thousands of minutes outside'

From the above statements, it is evident that prisoners on the death row are going through mental torture which is compounded by the conditions of the prison and the uncertainty regarding whether they would be executed or not with most of them having to be in a state of suspense for a long period of time. This is a degrading and inhuman treatment and amounts to torture, hence does not meet international standards.

Mental health of prisoners on the death row: According to information given by GPS to AI in March 2017, there were six prisoners on the death row considered to have mental and intellectual disabilities. The veracity of this figure is debatable as there are no qualified mental health practitioners in Nsawam Prisons. Likewise holding prisoners with a mental health condition is a violation of international laws and standards. Prisoners with mental health conditions are required to be taken to the psychiatric hospital. Locking up prisoners with a mental health condition is a threat to such individual as well as the whole prison community.

The non-availability of prison staff who are professionals in mental health care is also a concern. This concern about lack of mental health specialists in Ghana prisons was raised by the Special

Rapporteur on Torture in 2012. Despite the fact that AI had previously raised a similar concern, that there is a lack of adequate staffing in GPS to identify and respond to mental health needs of prisoners' psychiatric hospitals do not have accommodation and other necessary facilities for prisoners. This is a cruel, degrading and inhumane treatment which amounts to torture.

From the little available literature on the treatment and living condition of prisoners on the death row in Ghana, it is obvious that the treatment did not meet minimum requirements of the international standards.

7.6.4 Death penalty in Zimbabwe

Legal context on death penalty in Zimbabwe

The death penalty is legal in Zimbabwe. The legality of the death penalty is enshrined in Section 12 of the Zimbabwe constitution which states that:

‘no person shall be deprived of his life intentionally save in execution of a sentence at the court in respect of a criminal offense which he has been convicted’

However, the new constitution enacted in 2013 which was approved by 94.5% in a constitutional referendum abolished mandatory death sentences and the limited death penalty to cases of murder ‘committed *in aggravating circumstances*’. The new constitution bars death sentences for women and men under 21 years of age and over 70 years at the time of committing the offense (AI, 2015). The difference between the new and old constitution is that the only constitution exempted only pregnant women and persons below 18 years

Population: As at October 2016 there were eighty prisoners on the death row in Zimbabwe (Hands off Cain, 2016). This was after October 2016 commutation. It is regrettable however to say that on November 1 2017 the former President of Zimbabwe said he is in favor of resuming executions after more than a decade in response to rising murder rates. With the change of government in Zimbabwe, the fate of prisoners in Zimbabwe is unpredictable. Obviously, this situation will heighten the anxieties of this category of prisoners. However, the total population of the prisoner on the death row in Zimbabwe was put at 97 by the AI 2016/2017 report which was published in April 2017. There is a need to establish the number of prisoners on the death row in Zimbabwe. The last execution carried out was in 2005. This has been attributed to a lack of

hangman. Despite the fact that no execution has been carried out since 2005, the courts still sentenced 8 persons to death in 2016 (AI 2016/2017 report:36). In July 2015, the only woman on the death row in Zimbabwe had her sentence commuted to life imprisonment in compliance with the new 2013 constitution (Handoff Cain,2016)

‘Harare Central Prison is the only prison designed for death row inmates but some of the prisoners sentenced to death were now being kept at Chikurbi Maximum Prison because of shortage of space, a situation that has left a number of the condemned prisoners subjected to psychological torture as a result of the delays in carrying out the executions. Fourteen inmates in Harare are challenging the constitutionality of their continued incarceration and are seeking an order by the Constitutional Court to have their cases remitted for resentencing so that their sentences can be commuted to life sentences’ (Handoff Cain,2016).

Treatment and living conditions of prisoners on the death row in Zimbabwe

There is a dearth in literature regarding the living condition of prisoners on the death row in prisons in Zimbabwe. But taking a cue from the general prison condition in most prisons in Zimbabwe, which has been described by activists as *‘being worse than hell’*. The Zimbabwe prison is characterised by overcrowding, unsanitary condition, lack of food and medical care, inadequate facilities amongst others one may deduce that the conditions of prisoners on the death row could be worse.

However, the researcher was able to get some information from the report of News Day crew that visited the Harare Central Prisons sometimes between July and August 2016 and were conducted around the cells of prisoners on the death row by the officer in charge. The officer - in -charge of the prison informed the team that most of the inmates have been on the death row for between 3 and 21 years (my Zimbabwe,2016). One could imagine the trauma and stress that these prisoners will be going through sleeping and waking up with a feeling that they could be executed. Their feelings were expressed by one of them

‘The very thought that I am dying steals all my hope for the future makes me restless and the delay traumatises me. It causes me emotional and psychological trauma. Worse still, to think that I can spend 13 years before execution like my colleague George Manyonga crushes me’. (Bulawayo News24,2014)

The long delay in execution is the basis on which fourteen of the prisoners on the death row have approached the courts to commute their sentence to life imprisonment. One of the fourteen prisoners on the death row in Zimbabwe who wants his death sentence commuted to life imprisonment is arguing that forcing someone accused or even convicted of a capital offense to wait for years before an execution amounted to cruel and unusual punishment - which the Zimbabwean constitution says is illegal. A newspaper, Bulawayo News 24 quoted him thus '*This [delay in execution] has caused severe trauma on the inmates that some of them are losing their minds*', Mazango said in his constitutional challenge in the Supreme Court. *This* type of treatment is cruel, degrading and inhumane and amounts to torture.

The prisoners on the death row in Zimbabwe are locked up in solitary confinement for 23 hours. The officer in charge of the prison who stated that '*we only allow them one-hour to stretch and exercise their limbs*'. This situation of solitary confinement was confirmed by an ex-prisoner on the death row for 10 months and was haunted by the ghosts of Hwahwa Prison where he was in solitary confinement 23 hours a day for almost a year (my Zimbabwe, 2016). He went further to say that '*most of the inmates on the death row have lost their mind. Many no longer have hope or the will for life*'. Though the team that went visiting the cells of prisoner on the death row did not categorically state that the prisoners have lost their mind, they, however, described some of the expressions of the prisoners

'Walking into the corridor weirdest noises filled the air. Some were singing songs, others rambling away while some made queer sounds. One that stood out distinctly was from an inmate way down the corridor. It was a cross between a war cry and some unintelligible words. On the right side, another whimpered like a puppy, but many broke into whistles upon realizing they had visitors. The singing, talking gibberish and whistling could be a measure to keep their sanity under the circumstances. Many of them have been on death row for years and every day they wait with bated breath for death that never comes'

The above statements speak volume of the mental state of these prisoners.

The team described that the lightning in the corridor of the cells was poor and that the cells were tiny and suffocating. Again this living condition does not meet the minimum requirements of the Nelson Mandela Rules as well as that of the Luanda Declaration. In fact it negates article 9 of Safeguards guaranteeing protection of the rights of those facing death penalty which states '*Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering*'.

7.7 Older prisoners

This section explored the phenomenon of older prisoners from the global and African perspective and found that there is no much literature on older prisoners in African countries. The report is presented below.

One of the major challenges of older prisoners is the question 'who is an older or elderly prisoner? At what age should we identify a prisoner as being elderly? An extensive review of the literature suggests that previous researchers have defined older prisoners as those that are 65 of age and older (Grambling &, Forsyth 1988; Newman, 1984a), some 60 years (Kratcoski, 1990) and some 55 years (Goetting, 1992; Roth, 1992). However, the majority of studies in the UK and in the United States such as Aday, (2003), Aday, Krabil&Wahidin, 2004, Wahidin, 2001, 2003, 2004, 2005d) and the American Department of Justice have used the age of 50 or 55 as the threshold age to define when one becomes an older offender.

There are evidences that all over the world the issue of elderly prisoners has come to the fore. This is predicated on a fact that there is an increase in the aging population of prisoners. Recent studies have also shown that penal systems are struggling to cope with a rising number of older prisoners (Penal Reform International, Global Prison Trends 2015:17). In the United States, the Human Rights Watch (2012) reports that between 1995 and 2010, the number of state and federal prisoners age 55 or older nearly quadrupled (increasing 282 percent). The report further said the aging population (those 65 or older) constitutes the fastest growing segment of the American prison population. The number of prisoners over the age of 60 in jail in England and Wales has nearly doubled over the past decade to 3 577, according to the latest Ministry of Justice figures. Like in the U.S prisoners over 60 are the fastest growing age group in the prison population (The Guardian, 2014). There are 2 799 prisoners in Australian jails who were between 50 and 64 in 2010. The past

decade has seen the prison population of older Australians expand by approximately 84 percent, with 11.2 percent of all inmates being over 50 years of age (Australian Bureau of Statistics 2010).

However, despite the growth of the ageing population of prisoners, literature on older prisoners is limited (Loeb & Abudagga, 2006) this assertion was supported by (Baldwin & Leete, 2012) who opined that there is little literature on older prisoners. Like other nations of the world, there is a dearth of literature on the older prisoners in Africa hence the researcher could not get a reliable data on the prison population of older prisoners in African countries.

However, Sereria, (2014:221) in reviewing the Kenya prisons submit that the statistics of elderly offenders cannot be verified without research, but with as many as 5 000 offenders being either under life imprisonment or facing a death sentence, the number may increase significantly. In South Africa, there were 1 000 offenders who were beyond the age of 60 years as at 2014 according to Joey Coetzee, Deputy Commissioner, Department of Correctional Services (Parliamentary Monitoring Group, 2014). Langat, Kabi & Poi Poi (2016) in their study on the efficacy of rehabilitation programmes on psychosocial adjustment of elderly male offenders in Kakamega Main Prison, Kenya quoted 'Studies ICPS (2011) that South Africa tops in Africa with the highest number of elderly offenders in prisons followed by Ethiopia. However, this claim cannot be verified. Again, Langat et.al (2016) in their study citing Kenya Prison Service (2010) gave the elderly offender population in Kenya prison in 2 008 to be 11,301 while females were 283; in 2009 the male elderly offenders were 8 286 while females were 482; and in 2010 the prison population for the elderly offenders was 6 557 while 628 were female offenders. However, this information could not be verified.

Sereria (2014:221) posit that elderly offenders face enormous challenges due to their age. These challenges include reduced mobility; suffering from many diseases associated with old age like arthritis, urinary tract infections, and poor eyesight, dementia, among others. On the other hand, the US National Institute of Corrections identified a number of issues relating to an aging prison population structure, including both physical and mental health, death, nutritional problems, the social and emotional needs of elderly inmates, and the need to recognise differences between normal aging and aging accelerated by being in prison (Jones, Connelly, & Wagner, 2001).

Older prisoners arguably age faster than their cohorts on the outside of the institution as a direct result of chronic, long-term diseases and a history more accustomed to drug and alcohol abuse. 8.6 percent of the total U.S. prison population is age 50 or older, and the average age for those considered to be older prisoners is 57 (Hooyman, & Kiyak, 2011). Studies such as Nacro (2009) showed that older prisoners have a physiological age about 10 years older than their chronological age and that the psychological strains of prison life further accelerate the aging process.

In most prisons in Africa, there are no facilities such as wheelchairs; the building may not allow easy access to elderly people. Other challenges include mental health needs and other special needs associated with the elderly. A lack of research would also impede knowledge on the needs of this category of prisoners.

The study was unable to get relevant data on the population of older prisoners in African countries, the living conditions, and treatment of this category of prisoners. With studies showing that there is an increase in the population of older prisoners (Penal Reform International, Global Prison Trends 2015:17), there is an urgent need for researchers in Africa to conduct studies on the older prisoner. Conducting such studies will provide relevant data such as the statistics, peculiar needs and challenges of this category of prisoners which is required to formulate policies and intervention to meet these peculiar needs.

7.8 Chapter Summary

In this chapter, the focus was on prisoners with special needs. This category of prisoners examined in this chapter include prisoners with mental health challenges, prisoners living with physical disabilities, foreign national prisoners, prisoners living with HIV/AIDS, women in prisons, babies and children residing with their mother in prisons, prisoners on death penalty and older prisoners.

The study found that there are not many studies conducted on prisoners with mental health challenges, neither was there trained personnel to attend to the mental health needs of prisoners in most African countries. To compound the problem of this category of prisoners, most African countries do not have a policy regarding mental health. In addition, the chapter examined prisoners living with disabilities and found out that most Africa countries do not have data on prisoners living with disabilities. Most of the prisons in African countries are not conducive to this category of prisoners as there are no facilities such as ramps, no special toilet facilities, to meet their special

needs. In fact, prisons were not designed for people living with disabilities in mind. Furthermore, this chapter explored the conditions of foreign national prisoners. The finding of this study indicated the percentage of foreign national prisoners in different African countries and reported that some of the detainees are not in touch with their embassies or members of their family. The study identified some of the special needs of this category of prisoners. These include lack of legal representation, various forms of abuse, lack of communication with the consular of their nations and in some cases lack of medical care, inadequate food and language barriers.

In addition, the study revealed some current situation on prisoners living with HIV/AIDS. It was observed the prevalence of HIV/AIDS amongst the prison population, which most African countries do not allow for the use of condoms despite the fact that prisoners engage in homosexuality through consensus, and in some cases through rape. However, some prisons in Africa distribute condoms to prisoners as well as offer pre- testing counseling on HIV/AIDS.

Regarding women in prisons, the study revealed that the number of women in prison in Africa countries is growing by as much as 20%, most prisons are male-centered, the prisons are not designed to meet the peculiar need of women. However, the study found that the living conditions of women seem to be better than that of their male counterpart, most prison conditions for women did not meet international standards. The case of babies and children living with their mothers was also examined and the study revealed that different Africa countries allow babies and children to reside with their incarcerated mother. This varies one country to the other while some allow for a year, others, 18 months, 2 years and 4 years. There are no special arrangements for these children. Most of them have to share meals and beddings with their mothers. The children do not have access to medical treatment and special diets that could help their development.

Likewise, the chapter gave an account of death penalty and Africa countries, while there were some positive developments such as some countries like Benin Republic abolishing death sentence, Kenya commuting all death sentences, however there were other countries for example, Nigeria and Egypt that continued to use death penalty as a form of punishment, not only that there are speculations that a quite sizable of prisoners on death row may soon be executed in Nigeria. Finally, the chapter reported findings as regards older prisoners. One of the observations of this study is that not many studies have been conducted on these categories of prisoners, secondly, there is no data regarding older prisoners. The study showed again that there are no provisions to

meet the special needs of older prisoners. Though, international studies indicate that there is an increase in the population of older prisoners in Europe, America, and other developed nations, there is no such information regarding Africa countries. This is not to suggest that there is no corresponding increase among Africa older prisoners it is just that we do not have such data. In summary, the prison conditions and treatment of prisoners with special needs does not meet international standards as stipulated by the Nelson Mandela rules, Luanda Declaration amongst other international and regional treaties. This has enabled the researcher to identify some gaps in literature regarding prison system in Africa countries

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Chapter 8

Summary, Recommendations, and Conclusion

8.1 Introduction

This chapter consists of a summary of the findings in chapter 5,6 & 7 of this study which was designed to explore the prison systems in African countries. The thesis also investigated whether the prisons in Africa meet international standards in respect of treatment and conditions prisoners. In addition, recommendations were made based on the findings of the study. Finally, conclusions were drawn from the study.

8.2 Prison conditions

In chapter five of this study the findings on a literature search on the prison conditions in some countries in Africa, as typified by the physical structure, prison conditions, and overcrowding, medical care, separation of categories, food, sanitation beds, and beddings was presented. In addition, the chapter described findings based on a literature search on prison administration in some Africa countries in relation to record keeping, the presence or otherwise of ombudsman in the prisons and in some case if there were alternatives to incarceration. Finally, this chapter presented the findings from a review of literature on independent monitoring, internal and external inspection of prisons in some African countries. These indicators were measured against the Nelson Mandela Rules, the Kampala Declaration and the Luanda Declaration amongst others.

With respect to the physical structure of the prisons, review of the literature indicated that most of the prison buildings were inherited from the colonial masters and nothing has been done to renovate the buildings. The buildings are old, with broken down infrastructures and in bad shape. For instance, the majority of the prison buildings in Uganda were unsuitable for human habitation. In Nigeria infrastructures in prisons are old and in bad shape. The prison buildings in Chad are described as being dilapidated, neglected and overcrowded with visible leaks and cracked walls. Prison buildings in Senegal, Kenya, and Cote d'Ivoire are also described as dilapidated. The state of prison buildings in Somalia, Togo, and Zimbabwe are also said to be derelict. However, the situation in Swaziland shows a mixture of old and new buildings. Some of the buildings being used for prisons were not designed for prison purposes examples are Cote d'Ivoire and Zimbabwe.

It should be mentioned that the physical structure of African prisons is best suited for punishment and not rehabilitation. There is no form of rehabilitation that could take place in this type of building. From literature search, it is evident that the physical structures of prisons in most African countries do not meet international standards and poses threat to human life. Accommodating prisoners in buildings described above does not meet international standards as specified by international and regional treaties such as the Nelson Mandela Rules and Luanda Declaration.

Additionally, this chapter explored the living conditions of prisoners in African countries. The findings from literature search indicated that the living conditions of most prisons in Africa do not meet international standards. This is evident in the description in various literatures of the living conditions of prisoners in African countries. Most African prisons were said to still be poor and ridden with so many inadequacies. For example, the prison condition of Gabon was termed as '*dangerously sub-human*' due to the fact that prisoners are denied access to food, lack of basic sanitation, legal counsel, family and medical care. Prison conditions in Mali is said to have '*remained poor*'. The prison conditions in Benin Republic has remained dire as a result of poor access to water and food; in Angola the prisons are overcrowded and violent; Malawi prison conditions are described as atrocious and that the prison condition is worsening. The situation in DRC is characterised by unkempt buildings, overcrowding, unsanitary conditions and detainees are deprived of food and medical care. Prisoners in Eritrea are detained in overcrowded, underground cells and are denied food, water and other basic amenities of life. In South Africa, the conditions in the correctional centres are described as horrifying. Some of the horrifying living conditions include inadequate health care, poor sanitation, and inadequate food supply, lack of access to education and reading materials and in particular overcrowding. In Somalia prison conditions are expressed as deplorable and is typified with inadequate infrastructure, little management capacity, insufficient food and water, and lack of medical care. Prisons in Swaziland are described as '*hell holes*'. In Cameroon, prison conditions are said to be life-threatening where torture and abuse of detainees are widespread, with chronically overcrowded cells, lack of drinking water, limited health care and deplorable hygiene and sanitation. The prison condition is also worrisome as it overcrowded, with poor hygienic conditions, lack of food and access to medical care. With the various descriptions of the living conditions in prisons in Africa, it is obvious that they do not meet international standards, it's a gross violation of the fundamental human rights of prisoners and a threat to their lives.

Another major finding from literature highlighted in this chapter is the issue of overcrowding almost all the prisons in Africa are overcrowded with an exception of Algeria, Botswana and Sao Tome that has lesser number of prisoners below the official capacity. South Africa tops the list of overcrowded prisons locking up 169 984 offenders in facilities that have locking capacity of 119 134. The overcrowding situation in Senegal is described as '*being endemic*'. The overcrowding nature of Zimbabwe is expressed as being overwhelming with a prison population of 19 521 as at May 1, 2017, as against an official capacity of 17 000. In Cote d'Ivoire overcrowding in prison is said to be of great concern as there are 11 192 prisoners as against the official capacity of 4 871. Literature indicated that the overcrowding in Ghana prisons is 358% above official capacity; Togo is said to hold close to twice (4 427) its official capacity of 2 720; in Tanzania prisons is overcrowded by 6% above its designed capacity; Benin Republic, the situation is illustrated as being a serious problem with a total prison population of 7 067 as against the official capacity of 2 900. The circumstances in Uganda is alarmingly high with a prison population of 48 714 when compared to an official lock up the capacity of 16 652. Gabon prisons are claimed to be severely overcrowded with a prison population of 1 953 as against the official capacity of 500; while Morocco has a total prison population of 80 000 against an official capacity of 40 000. The overcrowding nature of prisons in most prisons in Africa does not meet international standards.

As stated earlier Algeria, Botswana and Sao Tome prisons are not overcrowded. Algeria has a prison population of 61 000 and an official capacity of 68 317; Botswana with a total prison population of 3 960 and a capacity of 4 337 and Sao Tome with a total prison population of 178 and an official capacity of 260.

In this chapter, review of literature also shows that some African countries took some steps to reduce overcrowding. For example, Morocco built additional 26 prisons within 3 years. In South Africa, a High Court judge gave a ruling mandating the DCS to reduce the prison population in a prison by 1 500 within six months. In Zimbabwe the then President Robert Mugabe pardoned 2 00 prisoners to decongest the prisons. A report indicated that Nigeria built 12 satellite prisons in the last 12 years. The overcrowding nature of prisons in Africa seems to be a carry over syndrome from the colonial days. As review of literature showed that prisons during the colonial era in African countries were characterised by overcrowding. So can we conclude that despite having gained independence many years back, many African countries cannot find solution to the problem

of overcrowding in prisons in African countries? With the overcrowding nature of prisons in Africa it is impossible for any form of rehabilitation to take place in African prisons. However, it need be mentioned that authorities in African countries need to do a lot more to address the problem of overcrowding as the situation is not only deplorable, it is disheartening and inhuman.

Furthermore, in this chapter, the study presented the finding of a literature search on medical care in prisons in African countries. It was observed that most African countries did not meet international standards in this regard. For example, in Tanzania prisons medical care was reported to be inadequate as 75% of prison do not have adequately trained medical personnel, friends and family have to buy prescribed medication for prisoners. In Uganda prisons, medical care is non-existent as there were only 5 medical doctors to attend to 48 714 prisoners in the 247 prisons in the country. It was also observed that some prisons do not have medical facilities. Prisoners in Chad have limited access to medical and healthcare, none of the prisons in Chad has a medical doctor and prisoners who claim to have medical skills attend to prisoners. This is unethical and portends danger to lives of prisoners. The situation is not different in Ghana prisons; as medical care is best said to be nonexistent as there are no medical doctors in the employment of Ghana Prison Service. Medical assistants provide medical services to prisoners and most time the medical assistants are overwhelmed due to lack of basic medical equipment and medications. In Gabon, medical care is also inadequate as only nurses on site provide medical services and such services are limited and there are no medications. There is no access to medical care in Sierra Leone. Likewise, in Swaziland, there is no medical care, this is one of the reasons why a special delegation from the UN is expected to investigate the prison conditions in Swaziland. In Morocco the medical care available to prisoners is inadequate; prisoners have to depend on friends and family members to buy their medical prescriptions for them. Similarly, prisoners in Egypt do not have access to adequate medical care due to a dearth of medical professionals, lack of infrastructure and facilities. There were also cases of arbitrary denial of medical care by prison authorities in Egypt. Prisoners in Nigeria do not have access to adequate medical care as a result of inadequate personnel, lack of medications, a chronic shortage of medical supplies, inadequate treatment, and inadequate medical personnel. The situation is the same in Equatorial Guinea and DRC.

Generally speaking, the medical care for prisoners in African countries is best described as nonexistent, inadequate as there are not enough medical personnel, lack of infrastructure and

facilities, and medication. Imprisonment is not meant to be a death penalty, without adequate medical care the prisoners who fall in are prone to die and life is irreplaceable. The medical care in most prisons in Africa do not meet international standards and the situation is an infringement of the prisoners right especially right to live.

Again in this chapter, the findings of a review of the literature as it pertains to separation of categories were presented. Most prisons in Africa did not meet international standards of separating different categories of prisoners. International standards stipulates that men are not expected to be locked up with women, convicted persons are not expected to be locked up with those awaiting trials, and minor offenders are not expected to be locked up with adult prisoners. In prisons, Cote d'Ivoire minors are locked up with adults and convicted persons are locked up with those that are awaiting trials. In Sierra Leone, the situation is the same with juveniles locked up in the same cells with adults and convicted persons with those awaiting trials. In Uganda, there were reports of minors being locked up with adults. Other countries that do lock up minors with adults are Swaziland, Tanzania, Zambia, Morocco while Gabon was also not complying to international standards by locking up convicted persons with awaiting trial, minors with adults as well as women with men. The danger of not meeting international standards is grave as it could lead to violence, abuse of all sorts and pose a danger to the lives of prisoners. This does not meet international standard and this practice exposes prisoners to various forms of abuse.

However, it was revealed that Equatorial Guinea to a large extent meets the international standards by separating men from women; minors from adults and convicted persons from awaiting trial persons. Algeria is also reported to have different prison facilities for prisoners under the age of 27.

Similarly, this chapter highlighted the finding from the review of the literature with regards to food supplied to prisoners in African countries. The findings indicated that most prisons in African countries did not meet international standards. For instance, the food supplied to prisoners in Malawi is said to be inadequate in terms of quality and quantity. It was also reported that in some cases the prisoners are fed only once a day. There were reported cases of malnutrition in Cote d'Ivoire, it was equally established that the prison budget cannot meet the nutritional needs of prisoners. Likewise, in Zimbabwe, food supply has been a challenge with a reported case of 100 prisoners died in 2012 due to malnutrition. In Zambia, Chad the food supply is inadequate and the

food is served once a day. Uganda prisoners are served meals that are nutritionally deficient while the food supply to prisoners in Sierra Leone is inadequate with the allocation of 2 500 Leons (half US dollar) a day for each prisoner. Prisoners in Gabon are denied access to food and when food is served it is deficient in terms of quality and quantity. The food supply to prisoners in Mali is irregular and when provided are poor in quality and quantity. The condition of food supplied to prisoners in Algeria, Benin Republic, and Eritrea is said to be poor. Prisoners experience a shortage of food and water in Kenya, Angola. It is reported that prison inmates are often deprived of food while South Africa prisoners are served meals only twice in a day and at irregular intervals.

However, prisons in Morocco do have an adequate supply of food and water. In all, the provision of food to prisoners in African countries does not meet international standards in terms of quality and quantity and frequency. This inadequacy makes prisoners be vulnerable to diseases and infections. The situation becomes complex with a lack of adequate medical care. With the food situation in most African prisons, it will be difficult if not impossible for any form of rehabilitation to take place. This food situation is also an abuse of the human rights of prisoner especially the right to life.

Additionally, in this chapter, a review of the literature was conducted to explore the compliance or otherwise of the sanitation conditions of prisons in Africa to international standards. Most prisons in Africa do not meet international standards. For instance, the sanitation in South Africa correction centers is expressed as being inadequate, unhygienic with inadequate bathrooms; this makes inmates fight over the use of bathrooms. It was also reported that there are inadequate toiletries as well as tissue papers. In Kenya, the prisons are characterised by dirty, fetid smell of sweat, dirt and human waste. The sanitation situation is portrayed as being terrible in prisons in Sierra Leone, while prisons in Cameroon is depicted as appalling with insufficient and overflowing dustbins full of waste and over spilling of septic tanks. The sanitation of Ghana prisons is defined as deplorable with no availability of toilet soap as well as washing soap and insufficient toilet and bathroom facilities. The sanitation is inadequate in prisons in Mali as prisoners still use buckets as toilets. Prison authorities deny inmates access to basic needs such as soap, shampoo, toothbrushes, toothpaste and combs that could make life a bit comfortable for prisoners in Egypt. In unsanitary condition is said to pervade all prisons in Malawi. The situation is not different in Zambia prisons as the sanitation situation is inadequate as prisoners still make use of pit toilets or piles of sand as

a toilet. The sanitation in Chad is said to be serious with blocked sewage system, presence of stagnant water and human waste in the prison yards

With the unsanitary conditions of prisons in Africa countries, prisoners are predisposed to the epidemic outbreak, it is a threat to the health and well being of prisoners. Once again in the absence of adequate medical care, this should be of serious concern to all. The sanitary conditions in most prisons in Africa does not meet international standards. No rehabilitation can take place in this kind of environment, hence it could be concluded that the philosophy of imprisonment in most of the prisons in Africa is still of punishment instead of being rehabilitative.

Moreover, this chapter made a report of the literature search on the provisions of beds and beddings to prisoners in prisons in African countries and examined whether such provision meets the international standards. From the literature, most prisons in Africa do not meet international standards. Some of the highlights of the findings are provided, in Zambia the provision is inadequate due to overcrowding, prisoners are not supplied bed and beddings and have to sleep in sitting positions and some sleep in shifts; prisoners in Chad sleep in narrow beds, on the ground and some on praying mats as a result of lack of bed and beddings; prisoners in Togo are not provided with bed and beddings with prisoners sleeping in shifts, while some lie down and other stand while waiting for their turn to sleep. In Egypt, it was found out that prisoners sleep on platforms without bed sheets or mattresses, the situation is not different in Uganda as there are no enough beddings, prisoners were noted to spend their nights standing; prisons in Sierra Leone are also characterised by a lack of beds and beddings; due to shortage of sleeping materials, prisoners in Kenya sleep on tattered materials with worn out blankets. In South Africa, there is a shortage of bed space as well as insufficient beds and beddings, prisons in Equatorial Guinea is also depicted by lack of mattresses. The beds and bedding situations in most prisons in Africa countries is saddening and dehumanizing. This smacks of punishment, the consequences of not getting adequate sleep is grave and versed, for instance, it could lead to aggressive and violent behavior, and emotional breakdown. The situation coupled with lack of mental health practitioners in most prisons, poses a threat to the safety of prisoners and even the safety of the prison staff. Once again no kind of rehabilitation could take place with this kind of situation. The inability of prison authorities to supply beds and beddings to prisoners does not meet international standards

Also, in this chapter of the study, the findings of a literature search on administration typified by record keeping, the presence of ombudsman and corruption was presented. The result of the finding was mixed as some countries did not comply with international standards while others did comply on a general note. Among the countries that did not comply with international standard in DRC with irregular and inadequate record keeping, as well as the absence of ombudsman where prisoners can lodge their complaints, the record keeping of DCS of South Africa is not satisfactory while there is ombudsman where prisoners can lodge their complaints but the effectiveness of the ombudsman is in question. The record keeping in Uganda prisons is inadequate, this is due to lack of computers; though there exist ombudsman, however, there is a backlog of complaints which makes the purpose of having an ombudsman defeated. In Mali, the record keeping is inadequate and there are no efforts to improve on it, there is no ombudsman as well. Though the record keeping in Kenya prisons is inadequate, it is instructive to note that efforts are being made to improve on the record keeping. With regards to Gabon, the record keeping is not adequate and there is no ombudsman, in Malawi, the record keeping is inadequate while there is ombudsman but lodging of complaints was done verbally and informally this gives room for censorship. In Angola prisons there is no ombudsman and corruption is said to be prevalent amongst prison officials, likewise in Benin Republic where it is reported there corruption is rife and the absence of a formal system to submit complaints without censorship. On a good note, Morocco and Equatorial Guinea are said to have adequate record keeping an effective ombudsman.

Finally, this chapter presented a review of the literature on compliance to international standards when it comes to the issue of independent monitoring. A host of countries in Africa comply with the international standards of granting access for independent monitoring of prison conditions. Some of the countries that comply are Ghana, Kenya, Sierra Leone, Mali, Algeria, Angola, DRC and Malawi amongst others. For example, in Ghana, the prison authorities permitted independent monitoring of prison conditions, it was also reported that some NGOs are collaborating with the GPS to alleviate the problem of overcrowding. In Kenya, prison authorities permitted independent monitoring of prisons by independent NGOs. DRC normally allow international organizations such as ICRC and United Nations Organisation Stabilisation Mission in DRC, and local NGOs to monitor prison conditions. Authorities in Sierra Leone also permitted unhindered access to monitoring of the prisons by independent NGOs and international organisations. However, a denial of access to monitor of prison conditions in Central Prison Pademba was reported. Malawi also

allowed domestic and international NGOs and the media to monitor conditions of prisons. Likewise, Prison authorities in Mali permitted visits by human rights movement and human rights organisation, however, they are expected to submit a request for such visits. Angola grant access to independent, local, international human rights observers and diplomats to monitor prison conditions. In Algeria, international organizations such as ICRC and local human rights observers inspect prisons. The case of Morocco seems to be different in that permission is granted to NGOs with human rights mandate to conduct unaccompanied monitoring. Access is also granted to NGOs that provide social, educational and religious services to prisoners. In Cote d'Ivoire there are different opinions while some claim that they have access to prisons others are saying they are denied access. There is no way to confirm these positions. Technically permission is granted for access to the prisons but NGOs reported that difficulties in gaining access. While it was reported that Swaziland denied access to independent monitoring of her prisons. To a large extent, most prisons in African countries complied with international standards concerning inspection of prisons.

8.3 Pre - trial detainees

The objective of chapter six was to explore the pre - trial detainees in prisons in Africa countries. This was done with regards to the population of pre- trial detainees, the conditions of pre - trial detainees in relation to the Nelson Mandela rules, Luanda Declaration and the laws of each country with regards to pre- trial detainees wherever applicable

In chapter six of this study, it was revealed that the proportion of pre trial detainees was high in relation to the overall prison population in most African countries. In fact, eight African countries namely Libya (90%); Benin (75%); Democratic Republic of the Congo (73%); Nigeria (72%); Central Africa Republic (70%); Liberia (68%); and Guinea and Togo (65%) were listed among the 23 countries in the world with the highest proportion of the total prison population in pre-trial/remand imprisonment.

The highest number of pre - detainees 45,264 was recorded in Nigeria, South Africa coming second with 45,257 and Morocco with 31,850. Sao Tome has the lowest population with 4 pre-trial detainees; Comoros with 42 and Mayonette (France) with 124. However, the study observed that the population of pre – trial detainees keeps on changing because persons are being detained in

prisons every day while others are released. It was equally observed that the date of the information regarding pre - trial detainees' population is not the same for example the data regarding Nigeria was as at March 31, 2016, while that of Morocco was at December 31, 2014. In addition, some of the figures given were mere estimates. There is a need to devise means of obtaining accurate data of pre detainees in prisons in African countries.

Furthermore, in this chapter, the conditions of detention pre-trial detainees in some African countries were explored using provision of the Nelson Mandela Rules, Luanda Declaration and the constitution of the African countries as a measure. These countries are Egypt, Kenya, Mozambique, Zambia, and Zimbabwe.

The study revealed that prison condition of pre - trial detainees in Mozambique did not meet international standards as stipulated in the Nelson Mandela Rules, the Luanda declaration and the constitutional provision of Mozambique. This is evident in the fact that literature search on the conditions of pre trial detainees in Mozambique indicated that pre- trial detainees do not have access to quality nutrition, lack of potable water, lack of legal representation and some of the pre-trial detainees stay longer in detention without trial as stipulated by the constitution of the country. Other conditions of pre - trial detainees that do not meet international standards include lack of adequate bed and beddings. And lack of medical care. Apart from the fact that the conditions of pre trial detainees do not meet international standards it also signifies a gross abuse of human rights of pre - trial detainees. It must be stated that there is a dearth of literature on the conditions of pre - trial detainees in Mozambique, this study relied on the data provided by a study of a prison in Maputo, the researcher is of the opinion that the findings cannot be generalized.

In Zimbabwe, based on literature search, the conditions of pre - trial detainees did not meet international standards as stipulated by Nelson Mandela Rules, Luanda declaration and negates the provision of the constitution of Zimbabwe. The conditions are said to be despicable and inhumane and amounted to violations of the detainees' rights. Specifically, it was revealed that pre - trial detainees are locked up in overcrowded facilities, due to overcrowding there are inadequate sleeping facilities as well as inadequate toilet and bathroom facilities, hence unhygienic and insanitary conditions in the prisons in Zimbabwe. The unhygienic conditions predispose pre -trial detainees to outbreak of diseases. The conditions of pre trial detainees are also characterized by inadequate medical care as there are no modern facilities as well as a shortage of medical

personnel; the nutrition is also poor in terms of quality and quantity; provision of potable water is inadequate. Pre - trial detainees are also detained without trial beyond the stipulated time as required by the law. It was revealed that some pre trial detainees have stayed for longer than they ought to have stayed even if they were convicted. It worthy to note that there is no much literature specifically on condition of pre - trial detainees in Zimbabwe.

The conditions of pre - trial detainees in Egypt did not meet international standards. It also negates the provision of the Egyptian constitution with regards to treatment of pre – trial detainees. For instance, a review of little literature available shows that pre - trial detainees are locked up in dirty and dingy prison cells with cockroaches crawling all over. Most of the cells are also noted to be overcrowded this is due to mass detention of people in Egypt; the prisons in Egypt are also characterized by nonsegregation of prisoners. Pre - trial detainees are often locked up with convicted persons. With regards to length of time pre-trial detainees are expected to stay before being charged to court,prison authorities in Egypt do not also comply with international standards and provision of the Egyptian constitution, literature revealed that pre -detainees have been detained for more than 48 hours without being charged to court. Some have been in detention for more than a year or more without being arraigned in any court of law. In addition, medical care to pre - detainees has been inadequate, in some cases it was reported that detainees were denied access to medical care and some prevented from getting their medication. These conditions do not only meet international standards but besides it's a gross abuse of the rights of detainees.

The chapter also explored the conditions of pre - trial detainees in Kenya. The study revealed that the conditions of pre - trial detainees did not meet international standards as stipulated by the Nelson Mandela rules, Luanda declaration and did not comply with the provisions of the legal provision of the country. From a review of literature, it was observed that pre - trial detainees are not separated from persons that have been convicted, the living condition such as sanitation is found to be inadequate. In addition, the medical care is inadequate due to a shortage of drugs and lack of enough medical personnel in the prisons in Kenya. Other major features of conditions in prison that does not meet international standards are inadequate beddings, lack of potable water, and lack of potable water, poor nutrition and lengthy pre trial period. These conditions of pre- trial detainees in Kenya aside from not meeting international standards are a negation of the fundamental human rights of the detainees.

Finally, regarding pre - trial detainees in prisons in Africa countries, the study explored the pre-detainees in Zambia through literature search and found that the conditions did not meet international standards as stipulated by the Nelson Mandela rules, the Luanda declaration and does not comply with various legal statues of Zambia. The living conditions of pre - trial detainees are poor as they are locked up in buildings that are old, dilapidated, leaking roofs and cracked walls. This type of building is dangerous and does not promote human dignity. Furthermore, there was none categorisation of detainees as pre-trial detainees are locked up with convicted persons and that pre - detainees spend longer time more than stipulated by law during trials. The study also revealed that there was inadequate medical care, inadequate beddings as well as lack of food and water. Again, the conditions of pre - trial detainees in Zambia prisons did not only not meet international standards, it also negates the laws of the land and is a flagrant disregard for the fundamental rights of the pre detainees.

It is quite unfortunate that most prisons in African countries did not meet international standards, not only that, some of these conditions have been like that over a period of time and nothing seems to be done to rectify this situation. Aside from not meeting international standards, the conditions could promote outbreak of diseases as well being a threat to the safety of detainees, the staff, and the general populace. These living conditions did not show that prisons in Africa countries have imbibed the philosophy of prisons being a rehabilitation center and not a punishment centers.

8.4 Prisoners with Special Needs

In chapter seven of this study, the researcher through literature search explored prisoners with special needs in some African countries namely Ghana, Egypt, Ethiopia, Zambia, Nigeria and South Africa. Though the UNODC identified eight categories of prisoners with special needs, this study explored five out of the eight. The categories of prisoners with special needs explored by this study are prisoners with mental health care needs, prisoners living with disabilities, foreign national prisoners, prisoners living with HIV/AIDS, women prisoners and babies living with their mothers in prison, prisoners under death and older prisoners. Specifically, this chapter conducted a literature search with reference to the population, facilities available, and challenges of these categories of prisoners and investigated whether the treatment of these categories of prisoners conforms with international standards using the Nelson Mandela rules, Kampala declaration, Luanda declaration article, and Bangkok rules among others as a yardstick. Regarding prisoners

with mental health needs, this study revealed the following with prisons in Ghana; that there is a dearth of literature on prisoners with mental health care needs; there is no data regarding the number of prisoners with mental health challenges, no capacity to deal with mental health issues of prisoners in Ghana. Other findings include lack of mental health professionals in the Ghana Prison Service, lack of financial support as well as poorly trained staff. This does not meet international standard.

In Egypt, the situation with prisoners with mental health challenges is not different from Ghana. As there is also a dearth of literature, there is no clarity of data regarding and there is no information on treatment available to prisoners with mental health challenges.

In Zambia, review of the literature shows that there is no systematic data regarding people living with disabilities in general as well as for prisoners; a lack of detection and treatment of mental health care needs are generally unavailable in prisons and there is not any form of support for prisoners with mental health challenges.

For prisoners in Nigeria, this chapter identified that there is no specific policy to address their mental health needs, there is no accurate data of prisoners with mental health conditions; paucity of literature on mental health condition and treatment of prisoners, no psychiatrist is in the employment of Nigeria Prison Service hence no form of assessment on admission into the prisons. It was also revealed that in some cases there is no segregation as prisoners with mental health care needs are often locked up in the same cell with other prisoners. Though there is a policy regarding prisoners with mental health needs in South Africa, however, there is a disparity between policy and practice as not much attention is paid to mental health needs of prisoners. The chapter also shows that there is an inadequacy of mental health professionals in the Department of Correctional Services; no accurate data on the number of prisoners with mental health care needs; detainees awaiting trial do not have access to screening for mental health care needs upon admission to the correctional centers in South Africa. In South Sudan, it was revealed that there were 162 prisoners with mental health challenges however there was no additional information. In Kenya, there were no data available. Likewise, in Ethiopia, the mental health condition of prisoners is not known as there is a paucity of literature regarding prisoners with mental health challenges.

The study revealed that all prisons in African countries reviewed did not meet international standards as stipulated by the Nelson Mandela rules and Luanda declaration with regards to mental health care needs of prisoners. It is also worthy to mention that there are some commonalities among the prisons regarding mental health needs of prisoners in African countries. Some of these are a dearth of literature, inaccurate or non existing data, and lack of facilities to treat prisoners with mental health care needs as well as the non existence of mental health practitioners. One could say that the prison authorities in African countries have not shown concern to prisoners with mental health care needs.

This chapter also presented a report of literature reviewed regarding prisoners living with disabilities in Kenya, South Africa, Ghana, and Kenya. The prisons in these countries did not meet international standards as stipulated by Nelson Mandela Rules and Luanda declaration.

In Kenya, there is a paucity of literature, no accurate data and there are no facilities or infrastructure such as ramps, wheelchairs and other equipment to assist their movements and specially designed toilet facilities. The situation is not really different in South Africa as this chapter revealed that there is a dearth of literature, there is no infrastructure for prisoners with physical disabilities that could assist them adjust to prison life. Furthermore, it was observed from the literature that there is no separation of categories for prisoners living with physical disabilities as they are locked up with other prisoners without taking their special needs into consideration. Also, prison staffs are not qualified and trained to identify special needs of prisoners generally.

In Ghana, there is no dependable information regarding the population of prisoners living with disabilities, neither is there any credible data of prisoners living with disabilities, and there are no facilities to cater for their special needs. The situation is not different in Nigeria as there is a paucity literature, no clear-cut policy for prisoners living with disabilities, and no official data. There are no facilities or infrastructure that could alleviate the sufferings of prisoners with physical disabilities. Some of the challenges of prisoners living with disabilities in Nigeria identified from a review of the literature are inaccessible prison facilities, lack of mobility, lack of hearing or seeing assistance.

It could be concluded that prisons in Africa were not designed taking into account that there would be prisoners with disabilities. Hence they are made to rely on other people to attend to their special

needs thereby compounding their suffering while in prison. This is a negation of the philosophy of rehabilitation and abuse of the fundamental human rights of these categories of prisoners. With regards to prisoners living with disabilities, prisons in Africa countries did not meet international standards

Furthermore, in this chapter, treatment, and conditions of foreign national prisoners were explored. Generally speaking, there was very limited literature on foreign national prisoners and there is no comprehensive data on the population of foreign nationals. In this chapter, available reviewed literature was from Zimbabwe, Ghana, Nigeria, Mozambique, and Ethiopia. In Zimbabwe, it was indicated that there were three hundred and forty-five foreign national prisoners but the authenticity of the figure cannot be ascertained. In South Africa, there is no accurate data as two serving cabinet ministers gave conflicting figures within the same week. Ghana Prison Services indicated that there were 707 foreign national prisoners as at 2011. This figure cannot be said to be current. In Nigeria as at 2014, there were 151 foreign national prisoners. The chapter also indicated that Gambia has the highest percentage (66.7%) of foreign national prisoners and Madagascar has the least with 0.1% of its prison population as foreign national prisoners.

Regarding the treatment of foreign national prisoners in prisons in Africa, the chapter indicated that it does not meet international standards. For instance, in Ethiopia, there are no translation services; no standard accommodation as the section where foreign nationals are locked up is overcrowded; no supply of bed and beddings; inadequate food supply as well as inadequate water supply in the night. On a good note, foreign national prisoners had access to adequate medical care. In Mozambique, some foreign national prisoners submitted that there are no diplomatic representatives in Mozambique. Other challenges include no legal representation, inability to contact family members and being allergic to some food served in prisons. In Sudan diplomatic missions of detained foreign prisoners are rarely informed of the citizens being detained in the prisons. However, when the contact is made representatives of the diplomatic missions are allowed to speak to detainees' families and lawyers but never allowed to visit inmates.

In summary, treatment of foreign national prisoners in prisons in Africa does not meet international standard. The following challenges of foreign national prisoners were identified namely, lack of documentation, the absence of diplomatic representation in African countries, lack of diplomatic agreement regarding the transfer of detainees, the absence of legal representation, inadequate food

and being allergic to the food being served in the prison. Others need to be protected from a discriminatory form of abuse, protection from harmful effects of imprisonment in a foreign country, lack of adequate medical care, hygiene and rehabilitation after serving their term.

This chapter equally reviewed the literature on HIV & TB infection among the prison population. It was observed that not many studies have been conducted in this regard. One of the reasons adduced for this is biases caused by conducting research within the hostile prison environment. Likewise, there is the absence of a comprehensive data on the prevalence of HIV& TB in prisons in African countries. In situations where data is available, they are of poor quality and rarely nationally representative. This chapter indicated that reviewed literature submit that the prevalence rate of HIV&TB is higher among the prison population when compared to the general population. Studies also reported a prevalence of 2-50% in Sub Sahara Africa where most HIV/TB studies have been conducted, and that prevalence of HIV&TB is higher among women prisoners when compared to the general women population.

This chapter through review of the literature identified some factors that are responsible for the prevalence of HIV &TB in prisons in African countries. These include, overcrowding, poor food and nutrition, lack of medical care, mixing of sentenced and unsentenced persons together, high-risk sexual behavior or such as drug use and blood mixing and lack of conjugal visit. Other factors include absence of a public health approach to HIV &TB and systematic failure to address growing burden of HIV &TB in prisons, lack of a sufficient number of health workers and training to provide HIV&TB treatment, failure of the criminal justice system, limited resources and inadequate funding. Specifically, for high prevalence of TB, overcrowding, lack of proper ventilation, poor isolation policies and significant immune-compromised population, lack of medical care and medication were highlighted as factors responsible for the spread of TB

Regarding policies guiding the prevention, care, and treatment of HIV &TB among prison population in Africa, literature revealed that only a few African countries have comprehensive policies in place guiding the implementation of HIV &TB prevention, care and treatment activities in the prison. It was further revealed that South Africa has a fully developed prison guidelines for TB, HIV and Sexually Transmitted Infections(STI). While South Africa has fully developed a comprehensive package of interventions prisons, Benin Republic, Nigeria and Zambia are still

dependent on guidelines developed for the general community with little or no reference to the peculiarities of the prison population.

The literature further revealed that Voluntary Counselling Treatment is available in some prisons in African countries. These countries include Cameroon, Cote d'Ivoire, DRC, Malawi, South Africa, Uganda, and Zambia. It was also discovered that some countries such as Burundi, Lesotho, South Africa and Namibia provided condoms to prisoners.

To conclude, one could say that the situation regarding HIV & TB infection in most prisons in Africa has not been given adequate attention and this does not meet international standards. It should be noted that the consequences of this neglect are far reaching as the prison doors can be described as a revolving door in which there is a regular human movement in and out of these prisons. The implication is that anyone could be infected with HIV virus through whatever means.

Again in this chapter, the treatment and living conditions of women prisoners were considered. The population of women prisoners was given, the percentage in relation to the general prison population was also stated. The total women prison population as at 2015 was 30 675. This still made women prisoners be in the minority. The study indicated South Africa has the highest population women prisoners of 4 193 representing 2.6% of the total prison population and Guinea has the least women prisoners with 4 (2.6%). South Sudan has the highest percentage (10.9%) and Zambia the lowest (1.0%) of women prisoners of the total prison population. Regarding women in prisons, the study revealed that the number of women in prison in Africa countries is growing by as much as 20%, most prisons are male centered, and the prisons are not designed to meet the peculiar need of women. Though, the study found that the living conditions of women seem to be better than that of their male counterpart, most prison conditions for women did not meet international standards.

For example, in Zimbabwe women prisoners live in dirty and overcrowded cells, there is no provision of sanitary pads thereby making women prisoners resort to using blankets, clothes and other unconventional and unhygienic materials during their menstruation period. Prisons holding female prisoners lack hygienic and clean toilet facilities, and do not have access to regular supply of toiletries. This chapter also indicated that these inhumane conditions have been in existence

over a period of time. There was also evidence of corruption among the prison staffs as some of the materials donated by NGOs and faith-based organizations do not get to the women prisoners. This chapter further indicated that NGOs and faith-based organizations contribute significantly to alleviating the needs of women prisoners in Zimbabwe. The living conditions of women prisoners are also deplorable as it is characterized by inadequate health care symbolised in insufficient medical facilities, inadequate medical personnel, for example, there are only 6 medical doctors for the whole prisons in Cameroon to attend to prisoners and guards and lack of medication. Additionally, there are cases of inadequate beds and beddings, no beds, no mattresses, blankets and bed sheets. In fact, literature revealed that there were situations that women prisoners in Cameroon slept on the bare floor and some had to rent mattresses from male prisoners at a fee. Similarly, the toilet facilities are inadequate and were constructed in the colonial era with little or no improvement since then. Though women prisoners are locked up differently from men in Cameroon prisons, the demarcation is often with wooden planks. However, juveniles are often locked up with adult offenders as well as awaiting trial persons with convicted women prisoners.

The conditions of women prisoners in Sierra Leone do not meet international standards as well. Though there were not much literature, the few indicated that there is overcrowding in the cells where women prisoners are locked up. Aside from the overcrowding, there is lack of pipe borne water, poor toilet facilities, substandard meals, inadequate medical personnel and medical care. Other problems encountered by women prisoners are inadequate medical care as a result of inadequate personnel and poorly trained guards and prison administration. On a bright note review of the literature indicated that there is compliance with regards to separation of categories amongst women prisoners in Sierra Leone. In Tunisia, women prisoners also experience overcrowding and are locked up for 23 hours of the day. They live in unhygienic and unsanitary conditions and nonavailability of mental health practitioners to attend to the mental health challenges.

To sum it up women prisoners are subjected to degrading, inhumane treatment that does not promote human dignity rather the treatment and treatment of women prisoners in Africa countries negate the philosophy of rehabilitation.

The chapter also explored the conditions of babies staying with their mothers in prison. Review of the available literature indicated that the laws of some countries in Africa permitted babies to live

with their mothers in the prison. The length of time allowed by law varies from 1 year as in the case of Tunisia and Senegal, and 4 years exemplified by Kenya and Zambia.

In most cases there are no special treatments accorded these children, for instance, no special diets are offered to the infants, for example in Cameroon, Zambia, Tanzania, Zimbabwe, Senegal and Sudan, children of women prisoners have to share food with their mother and in most cases the food lack basic nutrients needed for a growing child. Nevertheless, the situation seems to be different in Egypt and South Africa that offer different and nutritional meals for infants. In addition, in this chapter review of the literature indicated that children living with their mothers do not have access to medical care for example in Nigeria they do not have access to routine immunization. Lack of access to medical care makes the children prone to infections, cold, cough, rashes, and difficulties in breathing. There are no recreational facilities for these children some of them are locked up with their mothers hence restricting their movement as it is evidenced in Tunisia where women prisoners are locked up for 23 hours in a day.

However, it is not all sad stories as there are new and positive developments in Kenya and South Africa. For instance, a crèche has been built in Latang female prison in Kenya where children can play during the day but are locked up with the mothers in the evening till the following day. In South Africa officials of the Department of Correctional Services claimed that there are now 16 correctional centres now designed with mother and baby units to accommodate children, In Uganda, it was reported that the Uganda Prison Service has a budget to accommodate pregnant women and mothers with infants

In addition, this chapter had an overview of death sentence in Africa countries viz a viz international and regional treaties and legislation, presented the current data regarding the number of prisoners on the death row as well as reviewed the treatment and living conditions of prisoners on the death row in some countries in Africa namely, Democratic Republic of Congo, Egypt, Ghana, Zimbabwe. This study in this chapter provided the following: data of prisoners on the death row in Africa countries that have not abolished the death penalty; the number of execution recorded in 2016; recorded death sentences in 2016 and the statistics of people known to be under a death sentence as at the end of 2016.

Countries that have abolished death penalty include Angola, Burundi, Cape Verde, Cote d'Ivoire, Djibouti, Gabon, Guinea-Bissau, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa and Togo. In January 2015 the Republic of Congo abolished the death penalty (Amnesty International, 2015). In January 2016, the Constitutional Court of Benin ruled that, in order to comply with the country's international human rights obligations, all laws providing for the death penalty were void and death sentences could no longer be imposed in the country. Despite these positive developments countries like Nigeria continued imposing the death penalty as a form of punishment while Botswana reintroduced death penalty in 2016. Countries that carried out an execution in Africa included Egypt (44), Nigeria (3) and Botswana (1). As at the end of 2016, Nigeria has the highest number (1 979) of prisoners on the death row and Botswana with the lowest with 1 prisoner on the death row.

Other major findings in this chapter include the fact that the prison condition and treatment of prisoners on the death row do not meet international standards. Generally, there is a dearth of information on the conditions and treatment of prisoners on the death row. The countries reviewed in this chapter with reference to prisoners on the death row are Democratic Republic of Congo, Egypt, Ghana, and Zimbabwe. In DRC, the data available is inaccurate. The living conditions and treatment of prisoners on the death row are characterized by living in overcrowded cells, inadequate medical care, inmate-on-inmate violence and unsanitary conditions. The case of prisoners on the death row in Egypt is no different as a review of literature in this chapter indicated that the living condition is degrading, unsanitary and mentally harming conditions. The chapter also revealed that conditions of women prisoners on the death row in Egypt prisons are not different from their male counterparts as the living conditions are depicted by inadequate accommodation, poor ventilation, inadequate toilet facilities, poor and inadequate food as well as lack of access to recreation. In Ghana, this chapter equally revealed that there is a dearth of information regarding treatment and living conditions of prisoners on the death row. However, the few available literature stated that the living condition is poor and does not meet international standards. This is evident in the overcrowding nature of the cells, inadequate ventilation, inadequate medical care as well as inadequate food in terms of quality and quantity. They are also isolated from other inmates and locked up for most times during the day and in the night with some of them having mental health challenges and their situation is compounded by the lack of qualified mental health practitioners to attend to their needs. This could best be described as barbaric.

Finally, prisoners on the death row in Zimbabwe too are living in deplorable conditions which are manifested in inadequate accommodation, poor hygiene, and unsanitary conditions. The available literature indicated that some of this category of prisoners has been in this condition for a period between 3 and 21 years. In most cases, they are locked up in solitary confinement for 23 hours every day and this has resulted in some of them have mental health challenges without any form of support.

Once again, the treatment of prisoners on the death row does not meet international standards based on the inadequacies mentioned earlier on. This, therefore, calls to the question of what purpose is death sentence serving? More so when some of this category of prisoners have been on the death row over a long period of time. One could imagine the anxiety and stress they are being subjected to.

In addition, this chapter another category of prisoners with special needs- the older prisoners were considered. One of the main features of this review was the definition of who an older prisoner is? Here too, there is a paucity of literature on this category of prisoners, likewise, there is no data available. A review of the few available literature enabled the researcher found out that there was no infrastructure such as wheelchairs, walking canes as well as other aids to support older prisoners. Similarly, prison buildings were not designed to meet their needs as some of these buildings are storey buildings which make it difficult for them to access. This chapter further highlighted some of the challenges being encountered by older prisoners. These include reduced mobility, suffering from a disease associated with old age such as arthritis, urinary tract infection, poor eyesight, dementia among others.

8.5 Recommendations

Based on the findings of this study the following recommendations are made. The researcher is of the opinion that if these recommendations made are implemented it could assist in making prisons in African countries a rehabilitative and reintegration centers rather than the punitive nature of today's prisons. In addition, the implementation of these recommendations would enable prisons in African countries to meet international standards

It is being suggested that the field of corrections management should adopt a multi-disciplinary approach to resolving the multi-faceted challenges in the prisons in Africa. These challenges are

not purely legal. Therefore, professionals, theories, and practice from other disciplines such as psychology, sociology, education, mental health, general medicine, counseling, theology, social work amongst others be incorporated into corrections management.

With reference to the general conditions, it is being recommended that a state of emergency should be declared in each of the prisons in all African countries. The implication of this is that there would be acknowledgment of the various inadequacies, hence a need to address those challenges with a sense of purpose and sincerity.

One of the major findings of this study is the dearth of literature and comprehensive data about most aspects of prisons in Africa. Without adequate data and relevant information, it will be impossible to have a good understanding of the magnitude of the challenges being encountered in the various prisons in Africa. In the light of this, it is being suggested that more research should be conducted on prisons, prison systems, conditions of prisons, prison administration, welfare and training of prison staff, and need for prison reforms. In addition, incentives such as research grants, bursaries and subsidies should be granted to researchers in various disciplines such as criminal justice system, criminology, law, psychology, sociology, social work, mental health and other related fields. With more research, empirical data would be obtained and recommendations that are made based on the findings of these researches could inform policy formulation and guidelines to reform prisons in Africa.

As part of the efforts to reform the prison systems in Africa, there is a need to include corrections management into the curriculum of universities in Africa. This will enable would be prison staff to be properly trained rather than make working in prisons be all comers' affair. For universities that are already offering corrections management as a course, it has become imperative to review the curriculum of such courses to ensure it is culturally relevant and applicable to the prisons in each country as no two situations are the same. In a nutshell, there is a need to professionalise the management of our prisons.

Furthermore, there is a need to consider an African or indigenous approach to solving the problems plaguing our prisons. From a review of literature, it is evident that imprisonment is alien to African society. Imprisonment was designed and used by colonial masters as a form of punishment and to further their nest in a bid to colonise Africa. Before the advent of colonialism, there were traditional

ways of dealing with offenders. It is, therefore, being suggested that each African country could explore the possibility of adopting any traditional way peculiar to each country of treating offenders without a compromise to the fundamental human rights of offenders and without prejudice to security and general well being of the entire society.

It is also being suggested that there is a need for an increased and stronger advocacy about prisons in Africa. An increased and stronger advocacy will assist in bringing the various challenges of prisons in African countries to the attention of the government, individuals, and stakeholders in the criminal justice system, international organisations as well as the general public. Not only bringing issues to the fore, but a stronger advocacy would promote further engagement of various stakeholders in corrections management, the criminal justice system, the government of different countries as well as international organisations.

Another recommendation being made is that there should be a synergy within the practitioners in the criminal justice system. By practitioners, I am referring to the police, officials of relevant ministries such Ministry of Justice, the judiciary, the prison service, lawyers, advocates and NGOs. There should be a flow of communication regarding the judicial process. These practitioners should view their role as being complementary and not competitive. With this understanding the would be a renewed speed in the administration of justice.

Without any doubt, the resources of countries all over the world are no longer adequate to meet the various challenges of governance and this is having an impact on every sector of the country and prisons in Africa is not exempted. In fact, to some people, the government is wasting money taxpayers' money by having a budget for the prisons. The dwindling in resources is having a negative impact on the management of our prisons in Africa, it is therefore imperative for ingenuity in generating funds for the effective running of our prisons in Africa. In the light of this, it is being suggested that a 'special trust fund' be established to cater for the needs of our prisons in Africa. The government of African countries could mobilize private companies to contribute a specific part of their profit to this special trust fund. As an incentive these contributions would be tax-free. It is also being suggested that a management team comprising of financial experts, representatives of the companies making the contributions, representatives of government, NGOs, faith-based organizations and ex-prisoners be set up to manage the funds. Adequate measures should be put

in place to ensure judicious use of the funds. This special trust fund would be used to meet the needs of the prisons that could promote rehabilitation purposes.

In addition, efforts should be made to seek for collaboration and support of major players in the construction industry of the need to renovate the buildings in African prisons. It is no gainsaying that with the prevailing economic situation of most countries in Africa, it will be difficult if not impossible for the government to embark on the renovation of prisons in Africa. A form of agreement could be reached between the government of African nations wherein these construction companies could provide the materials and machinery needed for renovation of these prisons, while prisoners could be made to provide labour and they will be paid some stipends. The value of the materials and machinery is therefore calculated and value of such materials is made to be tax-free. This form of collaboration could be done without compromising security and the rights of the prisoners. We must not forget that the building or environment we live in shape our behavior. For effective rehabilitation to take place the prison buildings must be made habitable and conducive to prisoners

Likewise, with regards to sanitation and hygiene, the government could enter into an agreement with major players in the production of health and hygiene, and allied products to supply the prisons with their products. Once again, the value of these products is calculated and such values are made to be tax-free. Similarly, control mechanisms should be put in place to prevent corruption in the management of this scheme. In an alternative, prisoners could be given skills and materials to manufacture some of these products which they can use as well as sell to generate income for themselves in the short run and it would serve as a form of employment after completing their term or anytime they are released from the prisons.

Regarding the issue of medical care in prisons in Africa, it is being recommended that professional bodies of medicine, nursing, mental health, psychologists, social workers, counselors, educators and other related disciplines should encourage their members to make their services available on a regular basis to prisons and prisoners in Africa. The truth of the matter is that the government cannot meet up with their responsibilities to prisons in Africa. Making their professional services available to prisons and prisoners would enable them to appreciate the magnitude of medical challenges in prisons and this could assist in them advising government and even international organisations on the medical needs of prisoners. This could also help in the rehabilitation process

as prisoner's impression of being 'reject of the society' could be erased. Above all, this will be a service to humanity.

The biggest challenge in prisons in most Africa countries today is overcrowding. It is disheartening to mention that this problem has been in existence since during the colonial era. Many reasons have been adduced for the overcrowding nature of our prisons. Some of these reasons include legislation such as holding charges, the ineffectiveness of prosecutors, inadequate number of judges, inability to pay fines, lack of legal representation, corruption, and inefficiency in justice administration amongst others. All these reasons for overcrowding are all human problem which could be resolved if there is a will. It is, therefore, being suggested that a multidisciplinary approach is adopted to resolve this crisis. In doing this a team comprising of different profession and discipline such as correction management practitioners, police, criminologists, lawyers, medical doctors, mental health practitioners, psychologists amongst others should be constituted to review the cases of prisoners especially those are still awaiting trial, whose huge population is the major cause of overcrowding in prisons in Africa countries. This team would be expected to make recommendations to the government with reference to which of them should be released and to who should they be released. In addition, there is a need to review some of the existing criminal laws especially the holding charge which allows the police through the court to detain anyone while the investigation is ongoing.

Efforts should be made to conduct research on prisoners with special needs with particular attention to their statistics, peculiar needs, and their challenges. This will go a long way to formulate policies, design frameworks and provide necessary infrastructure such as wheel chairs, hearing aid, walking canes, ramps for easier movement. This will reduce further sufferings of prisoners living with disabilities as well as protect the rights of this category of prisoners. In addition, some of the buildings could be renovated to meet the needs of prisoners living with disabilities..

Another recommendation being made in respect of the mental health needs of offenders is that government of African countries must begin to take the issue of mental health of offenders very seriously. There should be a clear-cut and well-defined mental health policy specifically for prisoners. There should also be screening and assessment of prisoners to determine their mental health status. This procedure should be on a continuous basis as the prison condition could trigger

off and aggravate mental health challenges. Concerted efforts should be made to employ mental health practitioners into the prison and correctional services of countries in Africa.

Based on the prevalence of HIV/AIDS in the prisons and inadequate literature, it is being suggested that studies be conducted on the prevalence of HIV, factors responsible for the prevalence of HIV and TB, and how to control the infection, and treatment from the perspective of prisoners. These findings would inform the design of policies and formulation of intervention programs intended specifically to address the peculiarities of the prison community. Some of these studies could be sponsored in form of subsidy and scholarships. In addition, conjugal visits should be introduced; there is also a need for more awareness on HIV and TB. The researcher is also of the opinion that condoms should be distributed freely in the prisons, we cannot hide the truth, the act of same-sex intercourse is a fact in our prisons so if individuals outside are being encouraged to use condom why not those in the prison? There is also a need to ensure screening of would be detainees as well as concerted and sustained HIV/AIDS/TB awareness campaign in our prisons.

This study additionally revealed that most prisons are not designed to meet the specific needs of women. In the light of this, it is being suggested that government and prison authorities should consider renovating and refurbishing the existing prison infrastructure with a view to make the prisons gender friendly. Concerning the peculiar sanitary and hygienic needs of women prison authorities could liaise with health and hygiene companies on the supply of such products. The general women population of African countries should be sensitized by the government, faith based organisations, NGOs of the peculiar needs of women prisoners. The researcher is of the opinion that the plight of women prisoners is not known to most people especially women

Closely related to this are the concerns of women prisoners who are pregnant and those that have children in prison. In my view, since their population is not much the government and prison authorities should encourage NGOs, faith-based organizations, private hospitals, private companies and individual to come to the aid of this category of prisoners. I am also convinced that if there is a lot of information on this category of prisoners there will be responses from members of the public who will be moved by their plights and would be willing to assist. All these without prejudice to the security, rights, and privacy of the women prisoners and children involved.

With regards to babies living with their mothers in prisons in African countries, private interventions should be encouraged. For instance, the private sector could be encouraged to build creches, provide food, medical care as well as equipment such as toys, play items, educational materials that could assist the psycho-motor, psycho social development of these children. A consideration of alternative form of punishment could be meted out to the mothers of these children, if only for the sake of these innocent children.

It is being suggested that government of countries in Africa that have not abolished capital punishments as a form of punishment should do so. This is from a point of view that the imposition of the death penalty has not served as a deterrence to others from committing crimes that attract death penalty as punishment, neither has it brought back to life those who might have lost their lives in the process of the crime being committed. This researcher is suggesting that the death sentence of prisoners on the death row be commuted to prison terms by the government of various African countries that are concerned. This will save this category of prisoners from the torture of waiting for execution and wasting away in the various prisons.

Finally, a review of compliance to international standards by prisons in countries in Africa that is being carried out periodically by international organizations such as the UN, AI could be given a boost by the giving of incentives to countries that are compliant with international standards. This incentive may include giving of grants, providing technical and resources assistance to such countries while efforts should be made continually to ensure that other countries comply.

The researcher is of the opinion that if these recommendations are implemented the situation at prisons in African countries will improve; most of the prisons in countries in Africa would meet the international standards and prisons in Africa would truly be described as having rehabilitation as its philosophy.

8.6 Conclusion

This study was designed to explore the prison systems in countries in Africa. Taking a cue from the fact that prisons in Africa are said to be in crisis there is, therefore, an urgent need to find ways of resolving this crisis. However, for any meaningful reform to be carried out there is a need to obtain relevant and current data about prisons in Africa. Consequently, this thesis was expected to

provide current information and statistics that could provide a framework to assist in designing reform programs for prisons in Africa.

In addition, this thesis explored the level of compliance with international standards by prisons in African countries. This has become imperative because most of the African countries are signatories to international charters and treaties. For the purpose of this objective, the Nelson Mandela Rules, Kampala Declaration, and Luanda Declaration were employed as the benchmark to measure compliance or otherwise of prisons in African countries.

Due to time constraints, the following aspects of the prison system were explored Firstly, prison conditions; represented as a physical structure of the prison buildings, living conditions with special emphasis on overcrowding, medical care, separation of categories, food, sanitation, bed and beddings, administration and independent monitoring. Secondly, the study explored the conditions of pre - trial detainees vis-a-vis basic minimum requirements as stated by the Nelson Mandela Rules and the Luanda declaration. Thirdly, the study investigated the conditions and treatment of prisoners with special needs. Though the UNODC identified eight categories of such prisoners, this thesis, however, examined the condition and treatment of office namely prisoners with mental health care needs, prisoners with physical disabilities, foreign national prisoners, older prisoners, and prisoners on the death row. Equally, the study categorized women prisoners, pregnant women prisoners and babies living with their mothers in prisons as prisoners with special needs.

The systems theory was used as the theoretical framework. This formed the basis for exploring the prison as a part of a system in the criminal justice. The concept of the criminal justice system in some western and African countries was highlighted. The study also reviewed the historical development of punishment from the primitive society, the concept of punishment, the various theories and philosophies underpinning punishment. The underlying principle of this is to give an insight into the origin of imprisonment with a view to giving us an understanding of the major developments in imprisonment as a form of punishment. Furthermore, this thesis reviewed the literature on punishment and imprisonment in African societies before the advent of colonialism, imprisonment during the colonial era as well as situations of prisons during the post-colonial era.

The study adopted the qualitative and quantitative approach of research and obtained data primarily through literature search and review of related literature. The study obtained data from books, reports from international organizations such as the United Nations, United Nations Office on Drugs and Crime, Amnesty International, international conventions and treaties, internet websites, local and international journals, local and international media, articles, dissertations, and theses.

The findings of literature search revealed that most prisons in African countries do not comply with international standards. For instance, with regards to the physical structure, the findings indicated that most of the buildings in the prisons were inherited from their colonial masters and most of them are dilapidated and fit for human habitation. Another major finding of this study is that majority of the prisons in most African countries are overcrowded, this is also another trend that was inherited from the colonial masters. Likewise, in relation to medical care, most prisons did not comply with international standard as the study revealed that medical care is non-existent and inadequate in most prisons in African countries. This is evident in lack of medical personnel, lack of medical facilities and medications. It was observed that compliance with the international standard minimum requirement of separation of categories was not total. Though most prisons complied by separating male prisoners from female prisoners, however, the same could not be said of other categories. For instance, convicted persons are locked up with awaiting trial persons and minors are locked up with adults. Equally, the review of the literature revealed that the sanitary situation in most prisons in African countries is inadequate, characterised by dirty, dingy cells, inadequate toilet facilities, and bathroom facilities. The beds and bedding situation in most prisons in Africa were also found to be grossly inadequate as some prisoners sleep on the bare floor, some sleep in shifts and others sleep in sitting positions. The study also revealed that while some prisons have adequate record keeping, the majority of the prisons in Africa do not have adequate record keeping. The same situation is reported regarding the existence of ombudsman in prison. Most prisons in Africa do not have an ombudsman, some that have it is not effective while only a few have an effective ombudsman. To a very large extent, prisons in most countries in Africa permitted independent monitoring of the prisons. Review of the literature indicated that NGOs, human rights organizations and international organizations have access to monitor prison conditions.

Concerning, the pre - trial detainees, findings from the review of the literature indicated that the population of pre - trial detainees is in high proportion compared to the total prison population, in fact, the study further revealed that eight African countries are among the twenty-three countries with the highest population of pre trial detainees in the world. The treatment and living conditions of pre - trial detainees do not meet international standards and is evident in being kept in overcrowded and dirty cells, being locked up with convicted, having to spend longer time than the stipulated time without being tried, lack of legal representation, living in unsanitary condition, and lack of water amongst others. In addition, the study found out that there is a paucity of data and study specifically conducted on pre - trial detainees. The treatment and conditions of pre-trial detainees in most African countries is an infringement of the rights of the detainees.

In addition, the findings of the study on prisoners with special needs show that most of the prisons in African countries do not meet international standards. For instance, there are no screening, treatment, facilities infrastructure and mental health practitioners in place to take care of prisoners that have mental health care needs. In most cases too, there are no policies designed specifically for mental health needs of prisoners. Likewise, no facilities or infrastructure to meet specific needs of prisoners living with disabilities. They are often locked up with the other prisoners without due regard for the peculiarity as persons living with disabilities. In fact, prisons in Africa were not designed with prisoners with disabilities in consideration. Pertaining to foreign national prisoners, international standards are not met as little available literature revealed some of the documents in prisons are not translated into foreign languages, their embassies are not contacted by the prison authorities. In some cases, they are locked up in overcrowded prisons with inappropriate feeding. This study also revealed that though there is a prevalence of HIV & TB in prisons in Africa, little or nothing is done to address this major concern. It was also observed there is a paucity of literature on prisons and prisoner conditions.

Literature confirmed that women prisoners in Africa in the minority when compared to the total prison population in Africa and those prisons in Africa, did not gender friendly. It was also corroborated that most prisons in African do not meet international standards with regards to gender needs of women. For example, there is no provision for needs such as menstrual pads, toiletries. Women prisoners also live in overcrowded cells, without adequate toilet and bathroom facilities and young girls are locked up with women prisoners. In relation to pregnant women

prisoners there is no special treatment for them in terms of adequate food and supplement needed for their health condition, antenatal and post natal treatment. Talking about children, there is no special diet for them, they share whatever food given to their mothers, no medical treatment this predisposes these children to diseases. In some cases, the children are locked for longer periods with their mothers in their cells. Except in very few cases such as in a prison in Kenya and in South Africa do we have special provision for children living with their mothers in prison.

Another finding of this study is that the treatment of prisoners on the death row does not meet international standards as literature stated that some of them are locked up in solitary confinement for a long period, inadequate food, medical care and that some of them have been on the death row for a long time, some for more than twenty years. Finally, most prisons in Africa do not also conform to international standards with regards to older prisoners. There are no facilities to meet their needs such as mobility, hearing challenges and dementia. There is also no data regarding the older prisoners.

Based on the findings of this study recommendations were made. These recommendations include the need to declare a state of emergency in all prisons in Africa, need for more research to be conducted in prisons, need to consider indigenous means of handling treatment of offenders, need to professionalise the management of prisons in Africa, need for synergy between practitioners in the criminal justice system. Other recommendations include the need to establish a special trust fund to be managed by financial experts, for professional bodies in medicine, nursing mental health, psychologists and others to volunteer their services to prisoners and the need to decongest the prisons amongst others.

In conclusion, this study has further established the fact that prisons in African countries are in crisis, I wish to say 'serious crisis' in all its ramifications. Not only have most prisons not being able to meet international standards, the state of prisons in Africa takes us back to the stone age when imprisonment was a form of punishment. Without any gainsaying, there is no form of rehabilitation that could take place in this type of prison existing in Africa. The implication of these type of prisons is far-reaching, the level of violence in prisons will be rife, leading to threats to lives of prisoners and others, since prisons are like a revolving facility of people going in out there is a tendency for transmission of any form of diseases and infection to the populace. In addition, if no rehabilitation takes in prisons in Africa, there is a tendency for an increase in the

rate of crime as prisoners and or detainees released from prisons will not be able to reintegrate successfully into the society hence they will lapse into the world of crime. This poses danger to individuals who will be victims and if rearrested brings additional pressure on the overstretched facilities in the various prisons. If it is true that the civilization of a society is judged by the way, it handles her prisoners then Africa could be regarded to still be in the Stone Age. It has, therefore, become imperative for government, stakeholders in the criminal justice system, NGOs regional organizations and the general public rise up to this challenge and make prisons in Africa meet international standards as well as make the prisons really rehabilitative and reformatory institutions.